California State Assembly

PUBLIC SAFETY

REGINALD BYRON JONES-SAWYER SR.
CHAIR

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AGENDA

Tuesday, March 14, 2023
9 a.m. -- State Capitol, Room 126

REGULAR ORDER OF BUSINESS

HEARD IN SIGN-IN ORDER

1.	AB 229	Joe Patterson	Violent felonies.
2.	AB 280	Holden	Segregated confinement.
3.	AB 301	Bauer-Kahan	Gun violence restraining orders: body armor.
4.	AB 304	Holden	Domestic violence: probation.
5.	AB 391	Jones-Sawyer	Child abuse and neglect: nonmandated reporters.
6.	AB 423	Maienschein	Department of Justice: missing persons.
7.	AB 442	Villapudua	State summary criminal history information.
8.	AB 443	Jackson	Peace officers: determination of bias.
9.	AB 449	Ting	Hate crimes: law enforcement policies.
10.	AB 462	Ramos	Overdose response teams.
11.	AB 467	Gabriel	Domestic violence: restraining orders.
12.	AB 479	Blanca Rubio	Alternative domestic violence program.(Urgency)
13.	AB 484	Gabriel	Sentencing enhancements: property loss.
14.	AB 508	Petrie-Norris	Probation: environmental crimes.
15.	AB 600	Ting	Criminal procedure: resentencing.

COVID FOOTER

SUBJECT: All witness testimony will be in person; there will be no phone testimony option for this hearing. You can find more information at www.assembly.ca.gov/committees.

Date of Hearing: March 14, 2023
Counsel: Cheryl Anderson

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 229 (Joe Patterson) – As Introduced January 11, 2023

SUMMARY: Expands the crimes that are within the definition of a violent felony subject to additional penalties, including for purposes of California's Three Strikes Law, to include additional forms of sexual crimes, human trafficking, and felony domestic violence. Specifically, **this bill**:

1) Specifies that the following offenses are violent felonies subject to additional penalties:
    a) Human trafficking;
    b) Domestic violence;
    c) Rape, sodomy, oral copulation, and sexual penetration if:
        i) The victim was incapable of giving consent because of a mental disorder or developmental or physical disability;
        ii) The victim was unconscious;
        iii) The victim was too intoxicated to resist;
        iv) The victim submitted to the act under the belief that the person committing the act was someone known to the victim other than the accused; or
        v) The act was accomplished against the victim's will by threating to use the authority of a public official.
2) Makes the above offenses "strikes" for purposes of California's Three Strikes Law for offenses committed on or after January 1, 2024.

EXISTING LAW:

1) Defines a "violent felony" as any of the following:
    a) Murder or voluntary manslaughter;
    b) Mayhem;
    c) Rape accomplished by means of force or threats of retaliation;

d) Sodomy by force or fear of immediate bodily injury on the victim or another person or with a child under the age of 14 years, as specified;

e) Oral copulation by force or fear of immediate bodily injury on the victim or another person or with a child under the age of 14 years, as specified;

f) Lewd acts on a child under the age of 14 years, as defined;

g) Any felony punishable by death or imprisonment in the state prison for life;

h) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice, or any felony in which the defendant has used a firearm, as specified;

i) Any robbery;

j) Arson of a structure, forest land, or property that causes great bodily injury or that causes an inhabited structure or property to burn;

k) Arson that causes an inhabited structure or property to burn;

l) Sexual penetration accomplished against the victim's will by means of force, menace or fear of immediate bodily injury on the victim or another person, by threats of retaliation, or of a child under the age of 14 years, as specified;

m) Attempted murder;

n) Explosion or attempted explosion of a destructive device with the intent to commit murder;

o) Explosion or ignition of any destructive device or any explosive which causes bodily injury to any person;

p) Explosion of a destructive device which causes death or great bodily injury;

q) Kidnapping;

r) Assault with intent to commit mayhem or specified sex offenses;

s) Continuous sexual abuse of a child;

t) Carjacking, as defined;

u) Rape or sexual penetration in concert;

v) Felony extortion;

w) Threats to victims or witnesses, as specified;

x) First degree burglary, as defined, where it is proved that another person other than an accomplice, was present in the residence during the burglary;

y) Use of a firearm during the commission of specified crimes; and,

z) Possession, development, production, and transfers of weapons of mass destruction. (Pen. Code § 667.5, subd. (c).)

1) Provides that where the new offense is one of the specified violent felonies, in addition and consecutive to any other prison terms, the court must impose a three-year term for each prior separate prison term served by the defendant where the prior offense was one of the specified violent felonies. However, no additional term shall be imposed for any prison term served prior to a period of 10 years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction. (Pen. Code, § 667.5, subd. (a).)

2) Provides that where the new offense is any felony for which probation is not imposed, the court must impose a consecutive one-year term for each prior separate prison term for a sexually violent offense, as defined, provided that no additional term can be imposed for any prison term served prior to a period of five years in which the defendant remained free of both the commission of an offense which results in a felony conviction, and prison custody or the imposition of a term of jail custody imposed under realignment or any felony sentence that is not suspended. (Pen. Code, § 667.5, subd. (b).)

3) Defines a "serious" felony to include, among other things: rape: sodomy by force, violence, duress, menace, or threat or fear of bodily injury; oral copulation by force, violence, duress, menace or threat or fear of bodily injury; any felony in which defendant personally inflicts great bodily injury on any person other than an accomplice or personally uses a firearm; assault with intent to commit rape; any felony where defendant personally used a dangerous or deadly weapon; forcible penetration with a foreign object; commission of rape or sexual penetration in concert; and continuous sexual abuse of a child. (Pen. Code, § 1192.7, subd. (c).)

4) Provides that any person convicted of a "serious" felony who has previously been convicted of a "serious" felony receives, in addition to the sentence imposed by the court, an additional and consecutive five-year enhancement for each such prior conviction. (Pen. Code, § 667, subd. (a)(1).)

5) States that a conviction of a violent or serious felony counts as a prior conviction for sentencing under the two and three strikes law. (Pen. Code, § 667.)

6) Specifies all references to existing statutes in specified portions of the Three Strikes Law, are to statutes as they existed on November 7, 2012. (Pen. Code § 667, subd. (h).)

7) Provides that if a defendant is convicted of a felony offense and it is pled and proved that the defendant has been convicted of one prior serious or violent offense as defined, the term of imprisonment is twice the term otherwise imposed for the current offense. (Pen. Code § 667.)

8) Provides that a defendant, who is convicted of a serious or violent felony offense or a specified sex offense, and it is pled and proved that the defendant has been convicted of two or more prior violent or serious offenses, the term is life in prison with a minimum term of 25 years. (Pen. Code § 667, subds. (a) and (d)(2)(i); Pen. Code § 1170.12, subd. (c)(2)(A).)

9) Provides sentences of 15-years-to-life, 25-years-to-life, or life without the possibility of parole for certain sex crimes if specified circumstances are found to be true. This is known as the One-Strike-Sex-Law. Includes within the qualifying offenses under the One-Strike Sex Law rape and rape accomplished by force, duress, menace, or fear of immediate and unlawful bodily injury and rape accomplished by threat of retaliation. (Pen. Code, § 667.61.)

10) Imposes a sentence of 25-years-to-life for habitual sex offenders, defined as any person who is convicted of a certain sex crime, and then is later convicted of the same sex crime or another qualifying sex offense. (Pen. Code, § 667.71.)

11) States legislative intent that district attorneys prosecute violent sex crimes under statutes that provide sentencing under a "one strike," "three strikes" or habitual sex offender statute instead of engaging in plea bargaining over those offenses. (Pen. Code, § 1192.7, subd. (a)(1).)

12) Prohibits plea bargaining when an indictment or information charges any serious felony, unless there is insufficient evidence to prove the people's case, or testimony of a material witness cannot be obtained, or a reduction or dismissal would not result in a substantial change in sentence. (Pen. Code, § 1192.7, subd. (a)(2).)

13) Provides that the term for an offense, though otherwise punishable as a county jail felony, must be served in state prison if the current or a prior conviction is for an offense on the violent felony list. (Pen. Code, § 1170, subd. (h)(3).)

14) States that any person convicted of a nonviolent felony offense and sentenced to state prison shall be eligible for parole consideration after completing the full term for their primary offense. (Cal. Const., Art. I, § 32.)

15) Authorizes the California Department of Corrections (CDCR) to award credits earned for good behavior and approved rehabilitative or educational achievements. (Cal. Const., Art. I, § 32.)

16) Limits the award of presentence conduct credits to 15 percent of actual confinement time on a violent felony prison term. (Pen. Code, § 2933.1.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Current California law has become too lenient on some of the most atrocious crimes. AB 229 will penalize those individuals who harm individuals in the most serious manner by making felony domestic violence, sexual assault, and human trafficking of a sexual nature a violent crime. To paint a clearer picture, 'felony domestic violence' is not considered a violent felony despite containing both felony

and violence in its name. AB 229 is an additional measure to deter these crimes by increasing the penalties associated with them and holding the worst criminals accountable for their actions."

2) **Current Penalties**: The offenses addressed by this bill already carry very steep sentences. These punishments can often be further enhanced by any number of existing sentence enhancements.

To begin, rape, sodomy, oral copulation, or sexual penetration involving force, violence or duress are already violent felonies. (Pen. Code, § 667.5, subd. (c)(3), (c)(4), (c)(5) & (c)(11).) Sodomy, oral copulation, or sexual penetration with a child under the age of 14 years, as specified, are violent felonies, as is any felony in which great bodily injury is inflicted on someone other than an accomplice, or where a firearm is used. (Pen. Code, § 667.5, subd. (c)(4), (c)(5), (c)(8) & (c)(11).)

Additionally, all forms of rape are currently a serious felony, as are sodomy, oral copulation, and sexual penetration where force, violence, or duress is used. (Pen. Code, § 1192.7, subd. (c)(3), (c)(4), (c)(5) & (c)(25).) Moreover, if great bodily injury is inflicted on someone other than an accomplice, or a firearm is used in committing any of the offenses addressed in this bill, they are already also a serious felony. (Pen. Code, § 1192.7, subd. (c)(8).)

A person who has a conviction for a strike (serious or violent felony) faces increased prison time for any future felony conviction. Any future felony conviction when a person has a prior conviction for a single strike results in a doubling of the prison sentence. A person, with two prior convictions for strikes faces a minimum sentence of 25 years-to life for a felony conviction, if certain criteria are met. (Pen. Code § 667, subds. (a) and (d)(2)(i); Pen. Code § 1170.12, subd. (c)(2)(A).)

Further, violent or serious felony designation aside, any rape conviction is a felony punishable by up to eight years in prison. (Pen. Code, § 261.) Applicable sentence enhancements could be added to that – e.g., if great bodily injury is inflicted, the underlying sentence can be enhanced by three years. (Pen. Code, § 12022.7, subd. (a).) If certain circumstances apply, the sentence could be 15-years-to-life, 25-years-to-life, or life without parole under the One Strike Law for certain sex offenses. (Pen. Code, § 667.61.)

Depending on the circumstances, sodomy can be a felony and punishable in state prison for over a decade. (Pen. Code, § 286.) Oral copulation by force or fear is a felony punishable up to eight years in state prison. Where the victim is a minor, the penalties increase, and can be up to 12 years in state prison if the victim is under 14 years of age. (Pen. Code, § 287.) Forced acts of sexual penetration are generally a felony and punishable by up to eight years in prison. (Pen. Code, § 289.) As with rape, depending on the circumstances of these sexual offenses, the One Strike Law could apply and trigger a sentence of 15-years-to-life, 25-years-to-life, or life without parole under the One Strike Law. (Pen. Code, § 667.61.)

Domestic violence is currently a felony. The resulting "traumatic condition" necessary to sustain a domestic violence conviction need not be serious. It could be minor in nature. The penalties for a first offense range from up to one year in county jail to up to four years in prison. A second offense within seven years of a prior conviction is punishable up to five years in prison. (Pen. Code, § 273.5.)An enhancement adding up to five more years could

apply if great bodily injury is inflicted. (Pen. Code, § 12022.7, subd. (e).) Moreover, as discussed above, if great bodily injury is inflicted, the offense is both a violent and serious felony.

The current penalty for human trafficking for the purpose of obtaining forced labor or services is imprisonment in state prison for up to 12 years. If the offense involves human trafficking for the purpose of specified sexual conduct, obscene matter or extortion, the punishment proscribed is up to 20 years in state prison. If the offense involves causing a minor to engage in a commercial sex act, the penalty imposed may be 15-years-to-life. The court may also impose up to a $1.5 million fine on a person convicted of human trafficking. (Pen. Code §§ 236.1 and 236.4.) If great bodily injury is inflicted on the victim to commit the human trafficking crime, an enhancement of up to 10 more years in state prison can be added. (Pen. Code, § 236.4, subd. (b).) And again, as discussed above, if great bodily injury is inflicted the offense if both a violent and a serious felony.

The current penalties are serious, complex, and provide for myriad permutations depending on the circumstances of the offense.

3) **Three Strikes Implications**: In general, violent felonies as specified in Penal Code section 667.5 are considered "strikes" for purposes of California's Three Strikes law. However, Proposition 36, which was passed by California voters on November 6, 2012, specifies that only the crimes that were included in the "violent felonies" list as of November 7, 2012, shall be treated as strikes for purposes of the Three Strikes law.

> Notwithstanding subdivision (h) of Section 667, for all offenses committed on or after November 7, 2012, all references to existing statutes in subdivisions (c) to (g), inclusive, of Section 667 (Three Strikes Law), are to those statutes as they existed on November 7, 2012.

(Pen. Code, § 667.1; see also Pen. Code, § 1170.125 ["Notwithstanding Section 2 of Proposition 184, as adopted at the November 8, 1994, General Election, for all offenses committed on or after November 7, 2012, all references to existing statutes in Sections 1170.12 and 1170.126 are to those sections as they existed on November 7, 2012].)

This bill would make these offenses a strike under California law because this bill would amend the date which defines the list of strikes to include the provisions of this bill.

4) **Proposition 57**: In November 2016, California voters overwhelmingly approved Proposition 57. (Cal. Sect. of State, Statement of Vote Summary Pages (2016) p. 12; https://elections.cdn.sos.ca.gov/sov/2016-general/sov/06-sov-summary.pdf [as of November 30, 2021]; https://www.cdcr.ca.gov/proposition57/ [as of November 30, 2021].) As relevant here, Proposition 57, authorized earlier parole consideration for people who are serving state prison terms for nonviolent offenses, and gave them more opportunities to earn sentence-reduction credits for good behavior. (https://ballotpedia.org/California_Proposition_20,_Criminal_Sentencing,_Parole,_and_DNA_Collection_Initiative_(2020) [as of January 6, 2022]; see Cal. Const, Art. I, § 32.) For purposes of Proposition 57, violent offenses are those specified in Penal Code section 667.5, subdivision (c). (Cal. Code Regs., tit. 15, §§ 3490, subd. (c) & 3495, subd. (c).)

Importantly, Proposition 57 did not mandate early release for nonviolent offenders. Rather, it provided for early parole consideration.

> The Amendment does not require that all inmates convicted of nonviolent felonies are subject to immediate release from custody. Rather, those inmates are permitted only early consideration by the Board of Parole Hearings, which is charged with determining whether an inmate is suitable for parole. (See, e.g., *In re Perez* (2016) 7 Cal.App.5th 65, 84 [212 Cal. Rptr. 3d 441] [Board of Parole Hearings' core determination is whether a prisoner remains a current threat to public safety].)

(*Alliance for Constitutional Sex Offense Laws v. Department of Corrections & Rehabilitation* (2020) 45 Cal.App.5th 225, 235-236.)

By adding these offenses to the list of violent felonies in Penal Code section 667.5, subdivision (c), these offenses would be excluded from the CDCR's nonviolent parole consideration process under Proposition 57. A defendant convicted of one of these offenses would be excluded from this early parole regardless of whether they had also been convicted of a nonviolent felony. (*In re Mohammad* (2022) 12 Cal.5th 518.)

5) **Credit Limitations for Violent Felonies with State Prison Sentences**: Under Penal Code section 2933.1, a defendant convicted of a violent felony as defined by Penal Code section 667.5, subdivision (c), has their presentence conduct credits limited to 15 percent of actual confinement time. (Cal. Code Regs., tit. 15, § 3043.1; *People v. Brown* (2012) 54 Cal.4th 314, 321.)

   A violent felony conviction also affects post-sentence credits. As previously discussed, Proposition 57 gave incarcerated persons in state prison the ability to earn additional, nonstatutory credits for sustained good behavior and for approved rehabilitative or educational achievements. The increased credit-earning opportunities incentivizes incarcerated people to take responsibility for their own rehabilitation. (https://www.cdcr.ca.gov/proposition57/, *supra*.) Under CDCR regulations, a violent felony limits good conduct credits (GCC) to 33.3 percent of the total incarceration time, as opposed to 50 percent for a non-violent felony. (*Ibid*; 15 Cal. Code of Regs. § 3043.2.)

   Additionally, under CDCR regulations, persons convicted of nonviolent crimes earn 66.6 percent GCC while housed in camp or Minimum Support Facility (MSF) settings. People convicted of violent crimes, however, earn 50 percent GCC in fire camp settings and 33.3 percent in MSF settings. (See (https://www.cdcr.ca.gov/proposition57/, *supra*.)

   By adding these offenses to the list of violent felonies in Penal Code section 667.5, subdivision (c), these offenses would be subject to the violent felony credit limitations.

6) **Proposition 20**: Proposition 20 was a ballot initiative of the November 2020 election which, among other things, would have defined 51 crimes and sentence enhancements as violent in order to exclude them from Proposition 57's nonviolent offender parole program. In addition to those crimes currently listed as a violent felony, and substantially similar to this bill, the list included additional forms of rape, sodomy, oral copulation, and sexual penetration, as well as human trafficking and felony domestic violence. Californians voters overwhelming rejected Proposition 20, by almost 62 percent.

(https://ballotpedia.org/California_Proposition_20,_Criminal_Sentencing,_Parole,_and_DNA_Collection_Initiative_(2020), *supra.*) Arguably, this bill would ignore the will of the voters.

7) **Increased Penalties and Lack of Deterrent Effect:** The National Institute of Justice (NIJ) has looked into the concept of improving public safety through increased penalties. (https://nij.ojp.gov/about-nij.) As early as 2016, the NIJ has been publishing its findings that increasing punishment for given offenses does little to deter criminals from engaging in that behavior. ("Five Things About Deterrence," NIJ, May 2016, available at: https://www.ojp.gov/pdffiles1/nij/247350.pdf].) The NIJ has found that increasing penalties are generally ineffective and may exacerbate recidivism and actually reduce public safety. (*Ibid.*) These findings are consistent with other research from national institutions of renown. (See Travis, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, National Research Council of the National Academies of Sciences, Engineering, and Medicine, April 2014, at pp. 130 -150 available at: https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1026&context=jj_pubs, [as of Feb. 25, 2022].) Rather than penalty increases, the NIJ, advocates for polices that "increase the perception that criminals will be caught and punished" because such perception is a vastly more powerful deterrent than increasing the punishment. ("Five Things About Deterrence," *supra.*)

8) **Argument in Support**: According to the *California State Sheriffs' Association,* "According to the Public Policy Institute of California (PPIC), California law enforcement agencies experienced a troubling rise in domestic violence calls for service involving subjects with firearms over the course of the COVID-19 pandemic.

"Additionally, research shows that human trafficking has become one of the top criminal enterprises in the world. According to the U.S. Department of State, California ranks as one of the nation's top four states for human trafficking, accounting for 1,334 of the 10,583 human trafficking cases reported in 2020.

"Domestic violence and human trafficking continue to create countless victims across our state. By adding these offenses to the state's list of violent felonies, human sex traffickers and domestic abusers will face increased penalties that appropriately reflect the severity of their crimes and lifelong harm they inflict upon their victims."

9) **Argument in Opposition**: According to the *ACLU California Action*, "This bill is not necessary as California law already provides significant punishments for these crimes, and these punishments are often already further enhanced by myriad existing sentence enhancements.

"Moreover, researchers have found that certainty of punishment – that someone will be punished for a particular crime – has a greater deterrent effect than the severity of the [sic]

"While we share the author's goal of reducing crime in our communities, the evidence shows that AB 229 will unfortunately fail to do so. Although people will serve longer prison sentences, this will not increase deterrence nor meaningfully prevent crime by

incapacitation.[1] Instead, data show that enhancements increase racial disparities and drive over-incarceration, thus aggravating and exacerbating the root causes of crime. Notably, California already locks up a higher percentage of its people than almost any democracy on earth.[2] And while prison overcrowding does not make our communities safer, it does result in inhumane prison conditions, cost taxpayers millions of dollars in litigation, and stymies rehabilitation.

"AB 229 takes the wrong approach to public safety as it would contribute to the expansion of the budgets and footprints of our police, jails, and courts, monopolizing resources that would be better used to invest in our communities in ways that would improve mental and physical health, and create economic stability. For these reasons, we must oppose AB 229."

10) **Related Legislation**:

a) AB 32 (Stephanie Nguyen) would add felony hate crimes to the list of violent felonies subject to enhanced penalties. AB 32 was removed from hearing at the request of the author.

b) SB 14 (Grove) would expand the crimes that are within the definition of a violent felony and serious felony for all purposes, including for purposes of California's Three Strikes Law, to include human trafficking. SB 14 is pending hearing in the Senate Public Safety Committee.

11) **Prior Legislation**:

a) AB 266 (Cooper), of the 2021-2022 Legislative Session, was the same as AB 32. AB 266 failed passage in this committee.

b) AB 1665 (Seyarto), of the 2021-2022 Legislative Session, would have prohibited plea bargaining in cases charging human trafficking of a minor, except in specified circumstances. AB 1665 was held on the Assembly Appropriations Committee suspense file.

a) SB 1042 (Grove), of the 2021-2022 Legislative Session, would have added human trafficking to the list of violent felonies as well as to the list of serious felonies for all purposes, including for purposes of the Three Strikes Law. SB 1042 failed passage in the Senate Public Safety Committee.

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[1] "National Research Council (2014) The Growth of Incarceration in the United States: Exploring Causes and Consequences Committee on Causes and Consequences of High Rates of Incarceration, J. Travis, B. Western, and S. Redburn, Editors. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press."

[2] "Prison Policy Institute, California Profile. At California profile | Prison Policy Initiative"

b) SB 1072 (Dahle), of the 2021-2022 Legislative Session, would have added human sex trafficking to the list of violent felonies. SB 1072 was not heard in the Senate Public Safety Committee at the request of the author.

c) AB 786 (Kiley), of the 2019-2020 Legislative Session, would have added the crime of human trafficking, as specified, to the list of violent felonies and made it a strike under California's Three Strikes Law. AB 786 failed passage in this committee.

d) AB 197 (Kiley), of the 2017-2018 Legislative Session, would have added several offenses to the list of violent felonies and specified that they are strikes under California's Three-Strikes Law. AB 197 was never heard in this committee.

e) AB 67 (Rodriguez), of the 2017-2018 Legislative Session, would have added human sex trafficking and specified sexual assault offenses to the list of violent felonies. AB 67 was held in the Assembly Appropriations Committee.

f) AB 27 (Melendez), of the 2017-2018 Legislative Session, would have added specified sexual assault offenses to the list of violent felonies. AB 27 was held in the Assembly Appropriations Committee.

g) SB 75 (Bates), of the 2017-2018 Legislative Session, would have added vehicular manslaughter, human trafficking involving a minor, assault with a deadly weapon, solicitation of murder, rape under various specified circumstances, and grand theft of a firearm as violent felonies for purposes of imposing specified sentence enhancements. SB 75 was held in the Senate Public Safety Committee.

h) SB 652 (Nielsen), of the 2017-2018 Legislative Session, would have defined the unlawful possession of a firearm by a person previously convicted of a violent felony. SB 652 was held in the Senate Public Safety Committee.

i) SB 770 (Glazier), of the 2017-2018 Legislative Session, would have added human trafficking, elder and dependent adult abuse, assault with a deadly weapon, rape under specified circumstances, discharge of a firearm at an occupied building, and specified crimes against peace officers and witnesses, as violent felonies. SB 770 was held in the Senate Public Safety Committee.

j) SB 1269 (Galgiani), of the 2015-2016 Legislative Session, would have included human trafficking in the list of violent felonies, for which Three Strike sentencing, sentencing credit limits, enhancements for prior violent felony prison terms and other consequences apply. SB 1269 failed passage in the Senate Public Safety Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Arcadia Police Officers' Association
Burbank Police Officers' Association
California Association of Highway Patrolmen

California Capitol Connection
California Coalition of School Safety Professionals
California District Attorneys Association
California Family Council
California State Sheriffs' Association
Claremont Police Officers Association
Concerned Women for America
Corona Police Officers Association
Crime Victims United
Culver City Police Officers' Association
Fullerton Police Officers' Association
Inglewood Police Officers Association
Los Angeles School Police Officers Association
Newport Beach Police Association
Orange County District Attorney
Palos Verdes Police Officers Association
Peace Officers Research Association of California (PORAC)
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
Santa Ana Police Officers Association
Upland Police Officers Association

40 Private Individuals

Opposition

ACLU California Action
California Attorneys for Criminal Justice
California Public Defenders Association (CPDA)
Ella Baker Center for Human Rights
Friends Committee on Legislation of California
Initiate Justice
Pacific Juvenile Defender Center
San Francisco Public Defender
Young Women's Freedom Center

Analysis Prepared by: Cheryl Anderson / PUB. S. / (916) 319-3744

Date of Hearing: March 14, 2023
Counsel: Liah Burnley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 280 (Holden) – As Amended March 9, 2023

SUMMARY: Limits the use of segregated confinement and requires facilities in the State in which individuals are subject to confinement or involuntary detention to follow specified procedures related to segregated confinement. Specifically, **this bill**:

1) Defines "Facility" as any of the following in California:

   a) Private detention facilities;

   b) Jails and prisons; and,

   c) Detention facilities.

2) Defines "Detention facility" as a facility in which persons are incarcerated or otherwise involuntarily detained or confined for purposes of execution of a punitive sentence imposed by a court or detention pending a trial, hearing, or other judicial or administrative proceeding.

3) Defines "Private detention facility" as a detention facility that is operated by a private, nongovernmental, for-profit entity and is operating pursuant to a contract or agreement with a local, state, or federal governmental entity.

4) Defines "Segregated confinement" as the confinement of an individual, in a cell or similarly confined holding or living space, alone or with other individuals, with severely restricted activity, movement, or minimal or no contact with persons other than custodial staff for more than 17 hours per day. Segregated confinement is determined by time spent in a cell and contact with persons other custodial staff.

5) Provides that segregated confinement does not apply to extraordinary, emergency circumstances that require a significant departure from normal institutional operations, including a natural disaster or facility-wide threat that poses an imminent and substantial risk of harm. This exception applies for the shortest amount of time needed to address the imminent and substantial risk of harm.

6) Permits the use of segregated confinement for medical isolation purposes, to treat and protect against the spread of a communicable disease, as specified.

7) Prohibits placing a person in segregated confinement solely on the basis of confidential information considered by the facility staff but not provided to the individual placed in segregated confinement or included in required records.

8) Prohibits placing a person in segregated confinement solely on the basis of the person identifying as lesbian, gay, bisexual, transgender, or gender nonconforming.

9) Prohibits placing a person in segregated confinement as a means of protection from the rest of the detained population or a likely abuser. If an individual fears for their safety, the facility must transfer them to a more appropriate custody unit, including but not limited to, a single cell with sufficient programming and out-of-cell time such that it is not segregated confinement, a different section of the facility, a sensitive needs yard, or individual housing.

10) Prohibits placing a person in segregated confinement, including for disciplinary reasons, if the individual belongs to a designated population. "Designated populations" includes the following:

    a) Individuals who are 25 years of age or younger, as specified;

    b) Individuals who are 60 years of age or older;

    c) Individuals who have a mental or physical disability, as defined; or,

    d) Individuals who are pregnant, in the first eight weeks of the postpartum recovery period after giving birth, or have recently suffered a miscarriage or terminated a pregnancy.

11) States that, if a person disputes a decision regarding qualification in the designated populations category, the person may request and receive a secondary review of the determination. The facility administrator or chief physician shall conduct the secondary review, as appropriate.

12) Prohibits placing any individual in segregated confinement for more than 15 consecutive days and no more than 45 days total in a 180-day period.

13) Provides that, on or before the 15th consecutive day in segregated confinement, a facility shall transfer the individual out of segregated confinement to an appropriate congregate or individual setting. Individuals held in either a congregate or individual setting, shall be provided least six hours of daily out-of-cell congregate programming, services, treatment, and meals with an additional minimum of one hour of congregate recreation.

14) States that these provisions shall not be construed as requiring a facility to place an individual in the general population or congregate housing once they reach the 15-day limit on segregated confinement. The facility shall seek to place the individual in appropriate housing, including, but not limited to, individual housing with adequate programming and support in order to ensure the safety and well-being of the individual, as well as other individuals in the facility and staff.

15) Requires every facility to develop and follow written procedures governing the management of segregated confinement that meet the standards of care of the type of facility and to make those written procedures publicly available.

16) Requires every facility to document the use of segregated confinement, including, but not limited to, all of the following:

a) A written order shall be completed and approved by the facility administrator or designee within 24 hours of a person being placed in segregated confinement;

b) The order shall be provided to the individual within 24 hours of placement in segregated confinement and its contents communicated to them in a language or manner the individual can understand;

c) A clear and consistent log shall be kept, detailing the time spent in segregated confinement and the necessary compliance with the standards required for that confinement; and,

d) The written records shall be maintained by the facility and updated daily.

17) States that, when an individual is placed in segregated confinement, the facility shall do all of the following:

a) Document the facts and circumstances that led to placing the individual into segregated confinement;

b) Document the date and time that the individual was placed into segregated confinement;

c) Notify its medical or mental health professionals in writing within 12 hours of placing an individual in segregated confinement;

d) At least twice per hour, check on the individual involuntarily placed in segregated confinement. If the individual is demonstrating unusual behavior or has indicated suicidality or self-harm, the facility shall monitor the individual every 15 minutes, as specified;

e) Every 24 hours, have a medical or mental health professional assess the individual and have a mental health professional assess the individual every 48 hours for ongoing placement in segregated confinement;

f) Provide the individual a clear explanation of the reason they have been placed in segregated confinement, the monitoring procedures that the facility will employ to check on the individual, and the date and time of the individual's next court date, if applicable. This explanation shall be provided to the individual in writing, in a language or manner the individual can understand, within 24 hours of placement in segregated confinement;

g) Offer out-of-cell programming to a person in segregated confinement at least four hours per day, including at least one hour for recreation, as specified. Out-of-cell programming opportunities cannot be held in smaller cages or therapy modules. Time spent in an unpaid work assignment or in paid employment shall not be considered out-of-cell programming;

h) Offer programming led by program or therapeutic staff that is comparable to the programming offered to a person in the general population;

i) Shall not deny the individual access to their legal counsel or representative;

j) Maximize the amount of time that an incarcerated person held in segregated confinement spends outside of their cell by providing outdoor and indoor recreation, education, clinically appropriate treatment therapies, and skill-building activities;

k) Shall not impose any limitation on services, treatment, or basic needs, such as clothing, food, and bedding, restricted diets or any other change in diet as a form of punishment; and,

l) Shall not use additional shackles, legcuffs, double lock leg irons, or other restrictive means when the individual is in segregated confinement, unless an individual assessment is documented that restraints are required because of an imminent, significant, and unreasonable risk to the safety and security of other detained persons or staff.

18) Requires living spaces used for segregated confinement to be properly ventilated, appropriately lit according to the time of day, temperature-monitored, clean, and equipped with properly functioning sanitary fixtures.

19) Requires facilities to develop and provide appropriate programming to individuals that pose a significant safety risk to themselves or others and opportunities for individuals to transition to less restrictive housing that is not segregated confinement, including evidence-based transition programs and models found to be effective and successful in other carceral facilities, such as the following:

a) Transition pods, which provide participants with the opportunity to interact with other incarcerated individuals while out of restraints;

b) Transition groups, which are a revolving group that assists individuals who are preparing to be promoted to lower custody levels; and,

c) Residential rehabilitation units that are designed to provide access to therapy, treatment, and rehabilitative programming for individuals who have been determined to require more than 15 days of segregated confinement.

20) Requires facilities to create a monthly, semiannual, and annual cumulative reports. The reports must be made available online to the public, include the total number of individuals held in segregated confinement and data pertaining to individuals in segregated confinement, including, but not limited to, age, race, gender, and number of days in segregated confinement.

21) Requires the Office of the Inspector General (OIG) to assess each correctional facility within CDCR, including private detention facilities, for compliance with the provisions relating to segregated confinement, and to issue an annual public report, with recommendations to the Legislature regarding all aspects of segregated confinement in correctional facilities, as specified. The OIG shall have full access to all records of facilities in their jurisdiction

pertaining to segregated confinement and may conduct site inspections as appropriate.

22) Requires the Board of State and Community Corrections (BSCC) to assess each local correctional facility, including private detention facilities, for compliance with these provisions, and to issue an annual public report, with recommendations to the Legislature regarding all aspects of segregated confinement in correctional facilities, as specified. The BSCC shall have full access to all records of facilities in their jurisdiction pertaining to segregated confinement and may conduct site inspections as appropriate.

23) Requires local and state authorities to promulgate regulations or directives implementing these provisions.

24) Specifies that these provisions shall not be construed as mandating construction.

25) Permits a facility to repurpose existing space to accommodate out-of-cell time and programming for individuals, and to redesignate existing facilities and cells to comply with these provisions.

26) States that nothing in these provisions shall be construed as eliminating the use of individual housing when reasonable, appropriate, or required, including when that housing is requested by an individual and deemed appropriate.

EXISTING STATE LAW:

1) Prohibits the infliction of cruel and unusual punishment. (Cal. Const., art. I, § 17.)

2) Establishes rights for persons sentenced to imprisonment in a state prison, and provides that a person may, during that period of confinement be deprived of such rights, and only such rights, as is reasonably related to legitimate penological interests. (Pen. Code, § 2600.)

3) Prohibits the use of any cruel, corporal or unusual punishment or to inflict any treatment or allow any lack of care whatever which would injure or impair the health of the prisoner, inmate, or person confined. (Pen. Code, § 2652.)

4) Authorizes CDCR to prescribe and amend rules and regulations for the administration of the prisons. (Pen. Code, § 5058.)

5) Requires the Secretary of CDCR to classify and assign prisoners to the institution of the appropriate security level and gender population nearest the prisoner's home, unless other classification factors make such a placement unreasonable. (Pen. Code, § 5068.)

6) Requires the sheriff to receive all persons committed to jail by competent authority and the board of supervisors to provide the sheriff with necessary food, clothing, and bedding, for those prisoners, which shall be of a quality and quantity at least equal to the minimum standards and requirements prescribed by the BSCC for the feeding, clothing, and care of prisoners in all county, city, and other local jails and detention facilities. (Pen. Code, § 4015.)

7) Requires the BSCC to establish minimum standards for local correctional facilities. (Pen. Code, § 6030.)

8) Requires private local detention facilities to operate pursuant to a contract with the city, county or city and county. (Pen. Code, § 6031.6.)

9) Requires private local detention facilities to follow the minimum standards for local correctional facilitates established by the BSCC. (Pen. Code, § 6031.6, subd. (c).)

10) Limits the confinement of a minor in a locked room or cell with minimal or no contact with persons, as specified, and sets forth the guidelines for the use of room confinement of a minor in a juvenile facility. (Welf. & Inst. Code, § 208.3.)

11) Requires the California Attorney General to conduct reviews of county, local, or private locked detention facilities in which noncitizens are being housed or detained for purposes of civil immigration proceedings. (Gov. Code § 12532, subd. (a).)

12) Prohibits a city, county or public agency from contracting with a private facility for the purpose of civil immigration facilities, except as specified. (Civ. Code, § 1670.9.)

13) Prohibits private detention facilities in California, as specified. (Pen. Code, §§ 5003.1 & 9501.)

EXISTING FEDERAL LAW:

1) Prohibits the infliction of cruel and unusual punishment. (U.S. Const., 8th Amend.)

2) Makes the laws of the United States and the U.S. Constitution "the supreme Law of the Land." (U.S. Const. art. VI, cl. 2.)

3) Vests the control and management of federal penal and correctional institutions in the U.S. Attorney General, who shall promulgate rules for the government thereof. (18 U.S.C. § 4001, subd. (a).)

4) Authorizes the U.S. Attorney General to classify inmates and provide for their proper government, discipline, treatment, care, rehabilitation and reformation. (18 U.S.C. § 4001, subd. (b).)

5) Provides that the Bureau of Prisons (BOP), under the direction of the U.S. Attorney General, shall have charge of the management and regulation of all federal penal and correctional institutions and shall provide suitable quarters and provide for the safekeeping, care, and subsistence of all persons charged with or convicted of offenses against the United States. (18 U.S.C. § 4042.)

6) Requires the BOP to designate the place of the prisoner's imprisonment, and subject to bed availability, the prisoner's security designation, the prisoner's programmatic needs, the prisoner's mental and medical health needs, any request made by the prisoner related to faith-based needs, recommendations of the sentencing court, and other security concerns. (18 U.S.C. § 3621.)

7) Requires the U.S. Attorney General to arrange for appropriate places of detention for immigrants pending removal decision or removal. (8 U.S.C. § 1231, subd. (g)(1).)

8) Requires the U.S. Attorney General to ensure that undocumented criminals incarcerated in federal facilities are held in facilities that provide a level of security appropriate to the crimes for which they were convicted. (8 U.S.C. § 1231, subd. (h)(4)(B).)

9) Prohibits the use of room confinement for juveniles in federal custody for any reason other than as a temporary response to the juvenile's behavior that poses a serious and immediate risk of physical harm to any individual. (18 U.S.C. § 5043.)

10) Prohibits the use of segregated confinement in federal penal or corrections institutions for individuals who are pregnant or in post-partum recovery, unless the individual presents an immediate risk of harm to the individual or others. Any placement in a segregated housing unit must be limited and temporary. (18 U.S.C. § 4051, subd. (c).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "The practice of confining an individual alone in a concrete cell for months, years, and even decades on end grossly undermines the eighth amendment, protecting us all from cruel and unusual punishment. This is a human rights issue. Aside from the fact that solitary confinement only diminishes the prospects of successful rehabilitation, there are large bodies of research linking solitary confinement to self-harm, the deterioration of one's mental health and even suicide. We have even seen instances of pregnant women giving birth in solitary confinement. This is simply not right. California must discard this tortuous and counterproductive practice."

2) **Mental, Psychological, and Physical Effects of Segregated Confinement**: There is an increasing body of evidence that suggests that segregated housing produces unwanted and harmful outcomes, for the mental and physical health of those placed in isolation, for the public safety of the communities to which most will return, and for the corrections budgets of jurisdictions that rely on the practice for facility safety. When individuals are placed into segregated housing, it affects access to programming (e.g., education, treatment), the nature and extent of contact they can have with family and friends, and can even impact terms of community supervision. (U.S. DOJ Office of Justice Programs' (OJP) National Criminal Justice Reference Service (NCJRS), *Examining Race and Gender Disparities in Restrictive Housing Placements* (Sept. 2018) <https://www.ojp.gov/pdffiles1/nij/grants/252062.pdf> [as of March 3, 2023].) According to a report by the Vera Institute of Justice, "nearly every scientific inquiry into the effects of solitary confinement over the past 150 years has concluded that subjecting an individual to more than 10 days of involuntary segregation results in a distinct set of emotional, cognitive, social, and physical pathologies." (Vera Institute of Justice, *Solitary Confinement: Common Misconceptions and Emerging Safe Alternatives* (May 2015) <https://www.vera.org/downloads/publications/solitary-confinement-misconceptions-safe-alternatives-report_1.pdf>[as of March 3, 2023].)

   Further research has shown that there is an increased prevalence of hypertension in persons who have been in solitary condiment, which results in millions in additional future health

care costs. (*The Cardiovascular Health Burdens of Solitary Confinement* (2019) J. Gen. Intern. Med. 34, 1977–1980.) Also, vulnerable populations like pregnant women are far more susceptible to the potential dangers of solitary confinement. (*Unjust Isolation: The Diminishing Returns of Solitary Confinement of Pregnant Women and California's Need to Regulate It* (2021) 2 Hastings J. Crime & Punish. 122.)

The World Health Organization, United Nations, and other international bodies have recognized solitary confinement as greatly harmful and potentially fatal. In 2015, the United Nations General Assembly ratified the Nelson Mandela Rules, prohibiting any period of segregation beyond 15 days and defining it as torture. (*The United Nations Standard Minimum Rules for the Treatment of Prisoners* (the Nelson Mandela Rules), (2015).) The American Medical Association (AMA) recently called for the elimination of solitary confinement of any length, for the mentally ill, citing its mental health harms. (MA House of Delegates, *Reducing the Use of Restrictive Housing in Prisoners with Mental Illness: Resolution 412* (2018) at p. 641.)

3) **Ineffectiveness of Segregated Confinement as a Penological Tool**: Prison and jail administrators consider segregated confinement as a necessary tool to maintain safe and orderly correctional facilities and to promote the safety of staff and incarcerated people within prisons and jails. However, use of segregated confinement is not associated with reductions in facility or system wide misconduct and violence. Several studies on segregated confinement have found that its use does not decrease misconduct or violence, including staff assaults, and therefore does not improve the safety of the facility. (Benjamin Steiner and Calli M. Cain, *The Relationship Between Inmate Misconduct, Institutional Violence, and Administrative Segregation: A Systematic Review of the Evidence*, U.S. Department of Justice, National Institute of Justice (2016) <https://perma.cc/BCJ3-HYK3>[as of April 5, 2022].)

   Further empirical and anecdotal evidence suggests that segregated housing may have little influence on improving the behavior of incarcerated people and deterring violence. (Vera Institute of Justice, *Solitary Confinement: Common Misconceptions and Emerging Safe Alternatives, supra,* (May 2015).) There is little evidence to support the claim that segregated housing increases facility safety or that its absence would increase in-prison violence. (*Ibid.*)

   In addition, a report by the ACLU indicates that there is little evidence or research about the goals, impacts or cost-effectiveness of solitary confinement as a corrections tool. (ACLU, *ACLU Briefing Paper: The Dangerous Overuse of Solitary Confinement in the United States* (2014) <https://www.aclu.org/report/dangerous-overuse-solitary-confinement-united-states> [as of Feb. 15, 2023].) Data from some states suggest that recidivism rates for incarcerated people who have been held in segregated housing, regardless of whether they are released directly to the community, is significantly higher than for those who have not spent time in segregated housing while in prison. (*Ibid.*) Research from California suggests that rates of return to prison are 20% higher for solitary confinement prisoners. (*Ibid.*)

4) **Definition of "Segregated Confinement"**: This bill would define "segregated confinement" as the confinement of an individual in a cell or similarly confined holding or living space, "alone *or with other individuals*," with severely restricted activity, movement, or with minimal or no contact with persons other than correctional facility staff for over 17 hours a day.

Practically, this means that individuals cannot be in a confined living space for more than 17 hours—even if they are with other people. While there is no universally agreed-upon definition of segregated confinement, it is generally understood to be the physical isolation of an individual away from other people for a substantial period of time.

The term "solitary confinement," as used in the international medical and legal literature refers to the confinement of prisoners "without meaningful human contact." (G.A. Res. 70/175, Rule 44 (Dec. 17, 2015); see also Craig Haney, *Mental Health Issues in Long Term Solitary and "Supermax" Confinement*, 49 Crime & Delinq. 124, 125-27 (2003) [defining solitary confinement as a person's physical segregation from the rest of the prison population]; Am. Psych. Ass'n, *Position Statement on Segregation of Prisoners with Mental Illness*, 2 (2012) [segregation units have "one to two inmates in a cell"].) The American Bar Association (ABA) defines "segregated housing" as housing of a prisoner in conditions characterized by "substantial isolation from other prisoners." (American Bar Association, *ABA Standards for Criminal Justice Treatment of Prisoners*, § 23-1.0 (2010).) Isolation or administrative segregation is when a prisoner is placed in a cell "away from other prisoners, with limited contact to others." (Legal Information Institute, *Solitary Confinement* <https://www.law.cornell.edu/wex/solitary_confinement> [as of Feb. 13, 2023].) Black's Law defines it as a term used in prisons when a person is placed "away from other inmates." Merriam-Webster defines solitary confinement as the state of being kept "alone in a prison cell away from other prisoners." Solitary confinement is the practice of isolating people in closed cells virtually "free of human contact." (Solitary Watch, *What is Solitary Confinement?* (Dec. 2018) <https://solitarywatch.org/facts/faq/> [as of Feb. 13, 2023].)

Numerous studies conclude that the social isolation inherent in solitary confinement is harmful. The psychological harms inflicted by solitary confinement are a direct result of its inherent characteristics: isolation from other people, lack of meaningful perceptual stimulation, and extreme idleness resulting from the denial of any productive activities. (Terry Kupers, *Isolated Confinement: Effective Method for Behavior Change or Punishment for Punishment's Sake?*, Routledge Handbook of Int'l Crime & Just. Stud., 5-6 (2013).) "One of the most frequently mentioned harms of solitary confinement by criminologists, psychologists, and public health experts alike is the lack of meaningful social contact experienced in these units." (Ryan M. L., *Reforming Solitary Confinement*, 9 Health & Just. 23 (2021).)

Given that the harms of solitary confinement stem from isolation and a lack of meaningful human contact, does being in a confined holding or living space "with other individuals" properly characterize segregated confinement?

5) ***Ashker v. Governor of State of California*:** In 2015, California settled *Ashker v. Governor*, a historic class-action lawsuit brought by the Center for Constitutional Rights (CCR) on behalf of a group of Pelican Bay State prisoners who had each spent at least a decade in isolation. (CCR, *Summary of Ashker v. Governor of California Settlement Terms* <https://ccrjustice.org/sites/default/files/attach/2015/08/2015-09-01-Ashker-settlement-summary.pdf> [as of Feb. 15, 2022].) The settlement intended to end the practice of isolating prisoners who have not violated prison rules, cap the length of time a prisoner can spend in solitary confinement, and provide a restrictive but not isolating alternative for prisoners who violate prison rules on behalf of a gang. (*Ibid.*)

The *Ashker* agreement was first extended in 2019 by the federal court, based on a finding that CDCR was "effectively frustrating the purpose" of the settlement agreement by systemically violating due process rights. (CCR, *Court Finds Continued Systemic Constitutional Violations in California Prisons,* CCR (Feb. 3, 2022) <https://ccrjustice.org/home/press-center/press-releases/court-finds-continued-systemic-constitutional-violations-california> [as of Feb. 15, 2023].) In February 2022, the court determined that CDCR continues to violate the due process rights of incarcerated persons despite the *Ashker* agreement. The court found that CDCR is relying on inaccurate and fabricated confidential information to place individuals in solitary confinement and holding individuals in a restricted unit in the general population without adequate procedural safeguards. (*Ibid.*) Citing these violations, the court extended the *Ashker* agreement for a second one-year term. (*Ibid.*)

CDCR's repeated violation of the *Ashker* agreement demonstrates the need for statutory standards to govern the use of solitary confinement throughout the State.

6) **Definition of "Private Detention Facility"**: This bill would require every "facility" to follow procedures governing the management of segregated confinement. "Facility" is defined as any private detention facility, jail, prison, or detention facility. The bill further defines "private detention facility" as a detention facility that is operated by a private, nongovernmental, for-profit entity pursuant to a contract or agreement with a local, state, or federal governmental entity.

   Accordingly, all of the provisions governing segregated confinement in this bill apply to facilities operating pursuant to contracts with the federal government, such as the Bureau of Prisons (BOP), the U.S. Marshalls Service (USMS), and U.S. Immigrations Customs Enforcement (ICE). As discussed below, the State cannot dictate the policies of the federal prison system. (*GEO Grp. Inc., v. Newsom* (2021) 15 F.4th 919, 929, fn.2.)

7) **Federal Preemption**: This bill raises the question of to what extent the State can regulate detention facilities under contract with the federal government. "The Constitution guarantees the entire independence of the [federal] Government from any control by the respective States. The Supremacy Clause states that the Laws of the United States shall be the supreme Law of the Land. The Supreme Court has interpreted the Supremacy Clause as prohibiting States from interfering with or controlling the operations of the Federal Government. (*Geo Grp., Inc. v. Newsom* (9th Cir. 2022) 50 F.4th 745, 754 (citations omitted).)

   Under the preemption doctrine, states may not enact laws that hinder "the accomplishment and execution of the full purposes and objectives of Congress." (*Hughes v. Talen Energy Mktg.* (2016) 578 U.S. 150, 163.) A state law violates this principle if the state directly regulates the federal government. (*North Dakota v. United States* (1990) 495 U.S. 423, 435.) A direct regulation is one that imposes a prohibition on the national government or its officers. (*Penn Dairies v. Milk Control Comm'n of Pa.* (1943) 318 U.S. 261, 270.) To that end, state laws that restrict the conduct of federal agents and employees constitute direct regulation of the federal government. (*United States v. City of Arcata* (2010) 629 F.3d 986, 989; see also *Tennessee v. Davis* (1879) 100 U.S. 257, 263, [noting that the federal government "can act only through its officers and agents"].) State or local law that directly regulates the conduct of the federal government is invalid, even if it is no more restrictive than federal law. (*City of Arcata, supra*, 629 F.3d at p. 992.) For example, in *Blackburn v.*

United States (1996) 100 F.3d 1426, the Ninth Circuit declined to subject the federal government to a California statute imposing safety requirements on federal resorts. (*Id.* at 1435.)

This bill would directly regulate all detention facilities operating pursuant to a contract or agreement with a *federal governmental entity*. Therefore, all of the rules governing segregated confinement in this bill would apply to facilities that house individuals convicted of federal criminal offenses, pretrial detainees during the course of their federal criminal proceedings, and immigration detention.[1]

In so doing, this bill would put specific requirements and restrictive mandates on the operation of private federal detention centers, such as: requiring the facility to develop and follow written procedures for the housing of detainees and the use of segregated confinement within the facility, providing out-of-cell programming led by therapeutic staff for federal detainees, and prohibiting federal detention centers from using segregated confinement for a person's safety.

For comparison, AB 103 (Committee on Budget), Chapter 17, Statutes of 2017, enacted Government Code section 12532, which requires the AG to inspect and report on conditions in all immigration detention facilities in the state. Toward those ends, the statute expressly grants the state Attorney General access to the facilities, detainees, and records of any immigration detention facility in California. The statute puts requirements on the State's AG, but does not put any direct mandates on federal detention facilities that would dictate their operations. Otherwise put, AB 103, unlike this bill, did not put any requirements on the federal government, except to provide the AG "necessary access" to facilities for observation. (See *United States v. California* (2019) 921 F.3d 865, 866 [upholding AB 103 because it does not regulate "whether or where an immigration detainee may be confined" or "require that federal detention decisions" conform to state law].)

In contrast, AB 32 (R. Bonta), Chapter 739, Statutes of 2019, which enacted Penal Code section 9501 provides, "a person shall not operate a private detention facility within the state,"[2] was held constitutionally impermissible by the Ninth Circuit. In September 2022, the Ninth Circuit found that AB 32 would "override the federal government's decision, pursuant to discretion conferred by Congress, to use private contractors to run its immigration detention facilities" and would allow "discretion of federal officers to be exercised only if the state approves." As the Ninth Circuit opinion notes, "California cannot

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[1] Generally, federal facilities that are contracted with State or local detention facilities are required to comply with the laws of the relevant jurisdiction, as well as any other standards required by an authorized agency. (18 U.S.C. § 4013 (c)(2)(C).) The State is permitted to regulate private facilities that are not under the control of the federal government, and they can regulate federal detention facilities to the extent that the regulation does not disturb federal arrest or detention decisions. (*United States v. California* (2019) 921 F.3d 865, 866.)

[2] Notably, the provision in this bill goes even further than AB 32 (Bonta). AB 32 (Bonta) defined private detention facility as "detention facility that is operated by a private, nongovernmental, for-profit entity, and operating pursuant to a contract or agreement with a governmental entity." This bill defines private detention facility as "a detention facility operated by a private, nongovernmental, for-profit entity and is operating pursuant to a contractor agreement with a local, state, or *federal* government entity."

exert this level of control over the federal government's detention operations." (*Geo Grp., Inc. v. Newsom* (9th Cir. 2022) 31 F.4th 1109.)

This bill, unlike AB 103 (Committee on Budget) and much more comparable to AB 32 (R. Bonta), would exert significant control on the federal government's detention operations. Every provision in this bill would be required to be implemented by private detention centers holding federal detainees. The Legislature should consider whether the State is impermissibly regulating the federal government, and whether the provisions of this bill should be limited to state and local detention facilities only.

8) **Protective Segregation**: This bill would prohibit a facility from sending a person to segregated confinement as a means of protection from the rest of the general population or as a means of separation from a likely abuser. If an individual fears for their safety, this bill provides that the facility can transfer them to a "more appropriate custody unit" that is not segregated confinement, including a single cell, a different section of the facility, or a sensitive needs yard. This bill contains no exceptions for an institution to temporarily use segregated confinement for the protection of individuals, even in circumstances where the safety concern may extend throughout the facility, including a sensitive needs yard.

   The intent of this bill is laudable—to protect inmates from cruel treatment, however, the provisions in this bill could have an opposite result, by potentially failing to provide adequate protection for vulnerable incarcerated persons. The *California Association of Psychiatric Technicians* contend, "prohibiting individuals with mental illness from placement in a segregated confinement unit removes those inmates from a safe treatment environment and keeps them in a general population setting that poses a danger to their safety. Mentally ill inmates will often be placed in a segregated location because they are a danger to themselves or others, but also because others are a danger to them. Far too frequently, inmates' prey upon the less functioning mentally ill and manipulate them into harmful situations or pressure/trigger the psychosis causing the inmate to decompensate further. [...] [W]e may see more tragedies in prison without a safe treatment environment for mentally ill inmates to stabilize and receive treatment."

9) **Governor's Veto of AB 2632**: AB 2632 (Holden), of the 2021-2022 Legislative Session, was substantially similar to this bill. The Governor's veto message of AB 2632 provides, in part:

> I have prioritized improving the conditions within custodial settings, and I support limiting the use of segregated confinement. Segregated confinement is ripe for reform in the United States -- and the same holds true in California. AB 2632, however, establishes standards that are overly broad and exclusions that could risk the safety of both the staff and incarcerated population within these facilities. Specifically, this bill would categorically prohibit the placement of large portions of the incarcerated population in segregated housing-even if such a placement is to protect the safety of all incarcerated individuals in the institution. I am additionally concerned that the restrictions in this bill could interrupt the rehabilitation efforts of other incarcerated people and the staff

at these facilities.

This bill does not address the Governor's concerns that the standards are overly broad and exclusions could risk the safety of both the staff and incarcerated population. This bill, like AB 2632, would categorically prohibit the placement of large portions of the incarcerated population in segregated housing, even to protect the safety of all incarcerated individuals in the institution. Further, the bill does not account for the ways in which the restrictions of segregated confinement could affect rehabilitation efforts of incarcerated people.

10) **Existing Rules and Regulations on Segregated Confinement**: The use of segregated confinement varies by facility type. This bill provides a uniform definition of segregated confinement and establishes limitations and procedures on its use across all prisons, jails, detention centers, and juvenile facilities in California.

a) **State Prisons**: Under the current system, CDCR possesses broad discretion regarding the use of solitary confinement, administrative segregated housing, or other forms of isolated placement. According the CDCR's Department Operations Manual (DOM), some individuals are in "controlled housing" because they present "too great management problem for housing in general population settings." (DOM § 33010.30.) These housing units include, but are not limited to, the Security Housing Unit (SHU), Administrative Segregation Unit (Ad-Seg), Psychiatric Services Unit (PSU) and the Protective Housing Unit (PHU). Correctional officers can only be assigned to one of these units for no longer than two years due to their "high stress" nature. (DOM § 33010.30.2.) Individuals can be confined in segregated housing for much longer; nothing limits CDCR from placing individuals in consecutive, extremely lengthy SHU terms. (Cal. Code Regs, tit. 15, § 3341.9.)

Individuals who violate criminal or administrative statutes "shall be dealt with in the strictest possible legal manner," including among other things, segregation from the inmate general population. (DOM § 52070.5.4.) When an individual's presence in an institution's general population presents an immediate threat to the safety of the inmate or others, endangers institution security, or jeopardizes the integrity of an investigation of an alleged serious misconduct or criminal activity, the inmate shall be immediately removed from general population and be placed in Ad-Seg. (DOM § 52080.24.)

CDCR also utilizes disciplinary detention units or "DDs." DD is a temporary housing status which confines individuals assigned to designated rooms or cells for prescribed periods of time as punishment for serious acts of misbehavior. (DOM § 52080.20.) Placement in DD is excluded from the regulations governing segregated housing. (Cal. Code Regs, tit. 15, § 3335.5.)

Incarcerated individuals can also be "confined to quarters" (CTQ). CTQ refers to an authorized disciplinary hearing action whereby the person is restricted to their assigned quarters for a period not to exceed five days for administrative rule violations or ten days for serious rule violations. (DOM § 52080.23.) A person charged with a serious rule violation may be subject to immediate segregation from the general population, and can be "CTQed" for up to 10 days, or longer with director approval. (DOM §§ 52080.5.6; 52080.19.)

b) **Juvenile Facilities:** The Welfare and Institutions Code provides the guidelines for the use of room confinement of minors in juvenile facilities. (Welf. & Inst. Code, § 208.3.) These guidelines include that a minor can held up to four hours in room confinement. (*Ibid.*) After the minor or ward has been held in room confinement for a period of four hours, staff shall either return the minor or ward to general population; consult with mental health or medical staff; or develop an individualized plan that includes the goals and objectives to be met in order to reintegrate the minor or ward to general population. (*Ibid.*) Room confinement shall not be used before other less restrictive options have been attempted or exhausted, that it shall not be used for the purposes of punishment, coercion, convenience, or retaliation by staff, and shall not be used to the extent that it compromises the mental and physical health of the minor. (*Ibid.*)

The existing statutory scheme relating to juvenile room confinement provides that it "shall not be construed to conflict with any law providing greater or additional protections to minors or wards." (Welf. & Inst. Code, § 208.3 subd. (h).) Thus, to the extent that this bill would provide greater protections to youths, the requirement set forth in this bill would apply.

Recent investigations by the California Attorney General and BSCC revealed egregious violations of the room confinement rules at juvenile facilities in Los Angeles County, and similar violations may be occurring at juvenile facilities throughout the State. (California Attorney General, *Los Angeles County Enter into Groundbreaking Settlements to Protect the Rights of Youth in the Juvenile Justice System* (Jan. 13, 2021) <https://oag.ca.gov/news/press-releases/attorney-general-becerra-los-angeles-county-enter-groundbreaking-settlements> [as of Feb. 15, 2023].) This bill would provide protections for youth at juvenile facilities, in addition to those set forth in the above. Given the State's plans for the closure of the Division of Juvenile Justice (DJJ), all juveniles will be supervised in local facilities. Now more than ever, it is crucial to set clear standards for all counties in order to avoid the potential for the mistreatment of youth.

c) **Local Detention Facilities:** BSCC regulations set forth the minimum standards for local correctional facilities. The regulations require each county jail facility administrator to develop written policies and procedures for administrative segregation. (Cal. Code Regs., tit., 15, § 1053.) Administrative segregation consists of separate and secure housing but cannot involve any other deprivation of privileges than is necessary to protect inmates and staff. (*Ibid.*)

Administrative segregation cannot adversely affect an incarcerated person's health and requires documentation of its necessity to obtain the objective of protecting the welfare of incarcerated people and facility staff. Local facilities are also required to document ongoing review and evaluation of the need to continue a person's placement in administrative segregation. (Cal. Code Regs., tit., 15, § 1053 subds. (b)-(e).)

The regulations only allow disciplinary segregation as "an option of last resort and as a response to the most serious and threatening behavior, for the shortest time possible, and with the least restrictive conditions possible." (Cal. Code Regs., tit. 15, § 1083.)

d) **Private Detention Facilities**: As discussed above, California can only regulate private federal detention facilities to the extent that the regulation does not disturb federal arrest or detention decisions. (*United States v. California* (2019) 921 F.3d 865, 866.) However, the State can regulate private facilities that are not under the control of the federal government. (*United States v. California*, supra, at p. 866.) Privately operated local detention facility responsible for the custody and control of any local prisoner, pursuant to a contract with a city or county, must follow the minimum standards for local correctional facilitates established by the BSCC. (Pen. Code, § 6031.6, subd. (c).)

11) **Arguments in Support**:

a) According to *Disability Rights*, "this bill can help address the wide ranging, dangerous and discriminatory impact of solitary confinement. California needs a state-wide, comprehensive legislative solution to end solitary confinement of people with disabilities in jails, prisons, and immigration detention facilities."

b) According to *Immigrant Legal Defense* (ILD), "The World Health Organization, United Nations, and other international bodies have recognized solitary confinement as greatly harmful and potentially fatal. In 2015, the United Nations General Assembly ratified the Nelson Mandela Rules, prohibiting any period of segregation beyond 15 days and defining it as torture.

"Despite international demands to end the use of solitary confinement, the practice remains common in jails, prisons, and detention facilities in California.

"California must join the international community, and states like New York, New Jersey, Washington, and Colorado in setting clear standards and limits on the use of solitary confinement. This begins by recognizing that solitary confinement is torture, and setting uniform and consistent limits on how solitary is used in all detention facilities. Through this legislation, California can protect vulnerable populations from torture, and provide a clear roadmap to end the use of solitary confinement."

12) **Arguments in Opposition**:

a) According to the *Riverside Sheriffs' Association*, "Proponents claim AB 280 is intended to limit what they claim is "excessive use" of segregated confinement, but the bill doesn't seek to curb or regulate its use. Instead, AB 280 imposes a ban the use of segregated confinement for large categories of inmates, regardless of the serious or imminent risk of harm the inmates pose to themselves, facility staff, visitors or other inmates.

"ANY segregated confinement is banned for the following inmates - no exceptions
• Under age 26 - regardless of behavior or risk of harm to self or others. No protection for other inmates or staff from young adult inmates who attack others;
• Over age 59 - regardless of behavior or risk of harm to self or others. No protection for other inmates or staff from "older" inmates who assault others;
• Physical or mental disability - regardless of behavior or risk of harm to self or others. The definitions for such disabilities [Govt Code 12926] are so overly broad that it would classify nearly every inmate with some type of qualifying disability. [PC 2697(e)]

"Temporary inmate segregated confinement is banned - no exceptions even for their own safety Sheriffs and CDCR will be prohibited from placing an inmate in segregated confinement even if such temporary housing is necessary for the safety of the inmate from other inmates. …

"Segregated confinement (when permitted) capped at 45 days within 6 months - no exceptions Similarly, an inmate who attacks a correctional deputy, can be sent to seg-con for a maximum of 15 days (as long as the inmate is not in one of the exempted classes). Upon release, if the inmate attacks correctional staff again can be returned to seg-con for a max of another 15 days. Upon his next release, if he attacks yet another staff member, he'll get another 15 days max. After that, the same inmate can continue to assault correctional staff or other inmates but he cannot be placed in seg-con because AB 280 prohibits any inmate - from being sent to segcon for more than 45 days in any 180 day period - FOR ANY REASON - regardless of any ongoing safety threat the inmate poses."

b) According to *California Association of Psychiatric Technicians* (CAPT), "To ensure that inmates and patients receive the best possible treatment for their mental disorders, they must have a safe space free of fear or harm from other inmates. Many segregated confinement units were explicitly created for the mentally ill in prison to receive treatment and programing. In its current form, this bill would eliminate safe spaces and treatment environments where mentally ill inmates can stabilize to return to the general population."

13) **Related Legislation**: AB 353 (Jones-Sawyer), would require incarcerated persons to be permitted to shower at least every other day. AB 353 is pending in the Assembly Appropriations Committee.

14) **Prior Legislation**:

a) AB 2632 (Holden), of the 2021-2022 Legislative Session, was substantially similar to this bill. AB 2632 was vetoed.

b) AB 2321 (Jones-Sawyer), Chapter 781, Statutes of 2022, prohibits confinement of a minor in a locked single-person room or cell in a juvenile facility for a period lasting longer than one hour when room confinement is necessary for institutional operations.

c) AB 1225 (Waldron), of the 2021-2022 Legislative Session, would have prohibited an incarcerated woman from being placed in solitary confinement for medical observation. AB 1225 was held in the Assembly Appropriations Committee.

d) SB 759 (Anderson), Chapter 191, Statutes of 2016, repealed provisions of law that made incarcerated persons housed in segregation units ineligible to earn credits.

e) SB 124 (Leno), of the 2015-2016 Legislative Session, would have established standards and protocols for the placement of juveniles in solitary confinement. SB 124 was held in the Assembly Appropriations Committee.

f) SB 1289 (Lara), of the 2015-2016 Legislative Session, would have, among other things, prohibited an immigration detention facility from involuntarily placing a detainee in

segregated housing because of his or her actual or perceived gender, gender identity, gender expression, or sexual orientation. SB 1289 was vetoed.

g) SB 892 (Hancock), of the 2013-2014 Legislative Session, would have declared the intent of the Legislature that long-term segregated housing as a prison management strategy should be used only as a last resort and should be limited in duration. SB 892 failed passage on the Assembly Floor.

h) SB 970 (Yee), of the 2013-2014 Legislative Session, would have prohibited a minor who is detained in, or sentenced to, any juvenile facility or other secure state or local facility from being subject to solitary confinement. SB 970 died in this Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Collaborative for Immigrant Justice (Sponsor)
California Families Against Solitary Confinement (CFASC) (Sponsor)
Immigrant Defense Advocates (Sponsor)
Disability Rights California (Co-Sponsor)
Nextgen California (Co-Sponsor)
Aging People in Prison - Human Rights Campaign
Alianza
Amnesty International USA
Asian Pacific Islander Legal Outreach
California Assoc. of Mental Health Peer Run Organizations (CAMHPRO)
California Catholic Conference
California Immigrant Policy Center
California Innocence Coalition: Northern California Innocence Project, California Innocence Project, Loyola Project for The Innocent
California Public Defenders Association (CPDA)
Council on American-islamic Relations, California
Dbsa California
Dolores Street Community Services
Ella Baker Center for Human Rights
F.u.e.l.- Families United to End Lwop
Forward Impact Dba Represent Justice
Freedom for Immigrants
Friends Committee on Legislation of California
Glide
Grip Training Institute
Immigrant Legal Defense
Indivisible CA Statestrong
LA Defensa
Law Foundation of Silicon Valley
Lawyers' Committee for Civil Rights of The San Francisco Bay Area
League of Women Voters of California
Mental Health Advocacy Services
National Religious Campaign Against Torture

Oakland Privacy
Prison Law Office
Public Law Center
Robert F. Kennedy Human Rights
Root & Rebound
Santa Cruz Barrios Unidos INC.
Santa Cruz Climate Action Network
Secure Justice
Siegel, Yee, Brunner & Mehta
Smart Justice California
Sonoma Immigrant Services
Steinberg Institute
T'ruah: the Rabbinic Call for Human Rights
The Arc and United Cerebral Palsy California Collaboration
The Transformative In-prison Workgroup
UC Berkeley's Underground Scholars Initiative (USI)
Underground Scholars Initiative At the University of California, Irvine

Opposition

California Association of Psychiatric Technicians
California Correctional Peace Officers Association (CCPOA)
California State Sheriffs' Association
Chief Probation Officers of California
Deputy Sheriffs' Association of Monterey County
Los Angeles County Sheriff's Department
Placer County Deputy Sheriffs' Association
Riverside Sheriffs' Association

Analysis Prepared by: Liah Burnley / PUB. S. / (916) 319-3744

Date of Hearing: March 14, 2023
Counsel: Mureed Rasool

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 301 (Bauer-Kahan) – As Amended March 2, 2023

SUMMARY: Provides that, in determining whether grounds for issuing a gun violence restraining order (GVRO) exist, the court may consider evidence of acquisition of body armor. Specifically, **this bill**: Allows a court to take into consideration the acquisition of body armor as a factor which is indicative of an increased risk of violence for purposes of issuing an ex parte GVRO or a GVRO after notice and hearing.

EXISTING LAW:

1) Defines a GVRO as an order in writing, signed by the court, prohibiting and enjoining a named person from having in his or her custody or control, owning, purchasing, possessing, or receiving any firearms or ammunition. (Pen. Code, § 18100.)

2) Requires a petition for a GVRO to describe the number, types, and locations of any firearms and ammunition that the petitioner believes the subject of the petition possesses. (Pen. Code, § 18107.)

3) Prohibits a person that is subject to a GVRO from having in his or her custody or control any firearms or ammunition while the order is in effect. (Pen. Code, § 18120, subd. (a).)

4) Allows law enforcement to seek a temporary emergency GVRO to be issued if there is reasonable cause to believe the subject of the petition poses an immediate and present danger of personal injury due to a firearm and there are no less restrictive alternatives. (Pen. Code, § 18125, subd. (a).)

5) Allows an ex parte GVRO to be issued pursuant to statements made under oath that indicate a substantial likelihood the subject of the petition poses a significant danger in the near future due to a firearm and there are no less restrictive alternatives or such alternatives are inadequate for the circumstances. (Pen. Code, § 18150, subd. (b).)

6) Allows a GVRO after notice and hearing to be issued if there is clear and convincing evidence that the subject of the petition poses a significant danger of causing personal injury due to a firearm and if there are no less restrictive alternatives or such alternatives are inadequate for the circumstances. (Pen. Code, § 18175, subd. (b).)

7) States that a court, when determining whether grounds exist for the issuance of an ex parte GVRO or a GVRO after notice and hearing, must consider the following, among other things:

a) Recent threat of violence by the subject of the petition,

b) Any pattern of violent acts or threats within the past year,

c) Violations of specified emergency protective orders, and;

d) Convictions of certain misdemeanor offenses. (Pen. Code, § 18155, subd. (b)(1); Pen. Code, § 18175, subd. (a).)

8) Provides that a court, when determining grounds exist for the issuance of an ex parte GVRO or a GVRO after notice and hearing, may consider any other evidence of an increased risk for violence, including:

a) Unlawful and reckless use or brandishing of a firearm,

b) Prior arrest history for felony offenses,

c) A history of violating certain protective orders,

d) Documentary evidence demonstrating criminal offenses involving substance abuse, or demonstrating ongoing substance abuse,

e) Evidence of a recent acquisition of firearms. (Pen. Code, § 18155, subd. (b)(2); Pen. Code, § 18175, subd. (a).)

9) States that at the hearing, the petitioner has the burden to establish by clear and convincing evidence that the person poses a significant danger of causing injury to themselves or to another by possessing, owning, purchasing, possessing, or receiving a firearm and that the order is necessary to prevent injury. (Pen. Code, § 18175, subd. (b).)

10) Allows a restrained person to file one written request per year for a hearing to terminate the order. (Pen. Code, §18185.)

11) Makes a violation of a GVRO a misdemeanor. (Pen. Code, § 18205.)

12) Defines "body armor" as "any bullet-resistant material intended to provide ballistic and trauma protection for the person wearing the body armor." (Pen. Code, § 16288.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 301 safeguards the security of our communities by allowing judges to consider the acquisition of body armor as an important piece of evidence when deciding whether or not to grant a gun violence restraining order. According to The Violence Project, 21 mass shooters have worn tactical gear during their attacks. Most recent incidents include the Buffalo, New York mass shooting and in 2015 the San Bernardino shooting where both the perpetrators wore body armor to prolong their

attacks, making it harder for law enforcement to apprehend them. As such, it is vital for judges to recognize the significance of body armor and its use in violent crimes."

2) **Gun Violence Restraining Orders**: California's GVRO laws, modeled after domestic violence restraining order laws, went into effect on January 1, 2016. A GVRO will prohibit the restrained person from purchasing or possessing firearms or ammunition and authorizes law enforcement to remove any firearms or ammunition already in the individual's possession. Currently, a court may, when considering evidence of an individual's increased risk of violence, look into any prior felony arrest history, past violations of certain protective orders, substance abuse issues, and any recent acquisitions of firearms or other deadly weapons. (Pen. Code, § 18155, subd. (b)(2).) Authorizing the court to take into account a recent acquisition of a firearm is based on the common sense assumption that a person at risk of committing gun violence generally owns or possesses a firearm. Indeed, the National Institute of Justice (NIJ) has reported that 13% of mass shooters purchased their firearm illegally, and 77% purchased their firearm legally—meaning that 90% of mass shooters owned a firearm prior to the shooting. (NIJ. *Public Mass Shootings: Database Amasses Details of a Half Century of U.S. Mass Shootings with Firearms, Generating Psychosocial Histories*. (Feb. 3, 2022) <https://nij.ojp.gov/topics/articles/public-mass-shootings-database-amasses-details-half-century-us-mass-shootings#firearms> [as of Mar. 7, 2022].)

   Similarly, this bill would authorize a court to also consider whether a person has body armor in deciding whether to issue a GVRO. Although acquisition of body armor in and of itself may not be indicative of a greater risk for violence, when taking it into account under the totality of the circumstances, it may be pertinent. It should be noted that existing law limits courts to only considering recent purchases of firearms, defining "recent" as within six months prior to the date the GVRO petition was filed. (See Pen. Code, § 18155(b)(2) & (3).) Should this bill be amended to only consider recent body armor purchases?

3) **Overview of Body Armor**: The term "body armor" is commonly associated with vests that provide protection against ballistic impacts, i.e. bullets. (National Institute of Justice (NIJ). *Selection and Application Guide to Ballistic-Resistant Body Armor: For Law Enforcement, Corrections and Public Safety. NIJ Selection and Application Guide-0101.06*. (hereafter *NIJ Selection Guide*) (Dec. 2014.) <https://www.ojp.gov/pdffiles1/nij/247281.pdf> [as of Feb. 22, 2023] at p. 4.) There are generally two kinds of body armor, soft body armor and hard body armor. (*Ibid.*) Soft body armor is generally composed of ballistic resistant material that is layered so that when a bullet hits it, the fibers absorb and disperse the bullet's energy without letting it penetrate through to the wearer. (*Id.* at 5.) Hard body armor refers to plates that can be constructed from ceramics, metal, or other rigid material. (*Id.* at 6-7.) There are also variants that combine different types of body armor for greater protection against ballistics as well as stabbing weapons. (*Id.* at 7.)

   In recent years, body armor has been evolving from vests to other types of attire and is increasingly being purchased by civilians. (NPR. *Sales of body armor are on the rise. Who's buying and why?* (hereafter *NPR Body Armor Sales*) (Jun. 14, 2022) <https://www.npr.org/2022/06/14/1103935711/body-armor-sales-increase-rise-mass-shootings-bans> [as of Feb. 22, 2023].) Body armor now takes the shape of covert bullet resistant T-shirts and even backpacks, although their protection ratings vary. (*Ibid.*) There are even body armor blazers and vests that have been tested and rated by the NIJ. (Vice. *After Every Mass Shooting, Americans Turn to Bogotá's 'Bulletproof Tailor'* (Jan. 13, 2016.)

<https://www.vice.com/en/article/nz7bbq/after-every-mass-shooting-americans-turn-to-bogotas-bulletproof-tailor> [as of Feb. 23, 2023].) According to body armor retailers who spoke with NPR, body armor sales have increased and although their customers used to be mainly law enforcement and journalists, there is a growing popularity among individuals who want to wear body armor in everyday life. (*NPR Body Armor Sales, supra.)* One retailer stated that the customer base tends to be people working night shifts at liquor stores or gas stations. (*Ibid.*)

4) **Gun Violence, Mass Shootings, and Body Armor**: According to The Violence Project, over the past forty years at least 21 mass shooters wore body armor, with a majority of those occurring in the past decade. (AP. *Buffalo is latest mass shooting by gunman wearing body armor.* (hereafter *AP Buffalo Shooting*.) (May 26, 2022) <https://apnews.com/article/mass-shootings-buffalo-body-armor-f7789ba97dee4d786ac24ec5c642b7ca> [as of Feb. 23, 2023].) Although the database does not show a clear correlation with body armor and the number of victims, a co-founder of The Violence Project stated that body armor could enable attackers to shoot longer and is a symbolic way to adhere to societal expectations of what a mass shooting looks like. Most recently, the shooter in Buffalo was wearing body armor and was in fact shot by a security guard, but was not stopped. (*Ibid.*)

   While acquisitions of body armor alone might not be indicative of a person posing a significant danger of causing injury to themselves or to another, for purposes of issuing a GVRO, when taken into consideration with other relevant factors, it may.

5) **Argument in Support**: According to *Everytown for Gun Safety*, "The number of mass shooters wearing body armor has been trending upwards in the past number of years, with at least 21 mass shooters over the last 40 years wearing body armor, according to The Violence Project. The majority of these have been in the past 10 years. This includes the May 2022 mass shooting at the Tops supermarket in Buffalo, NY where an act of white supremacist, hate-motivated violence killed 10 people and left a community forever traumatized. Other high-casualty mass shootings where the perpetrator utilized body armor include the 2015 San Bernardino mass shooting here in California, the 2012 Aurora, CO movie theater mass shooting, and the 2021 Boulder, CO supermarket mass shooting.

   Over the past decade, body armor has become an increasingly common accessory worn by extremists and those committing mass terror acts against communities. Body armor leads to greater damage by making it more difficult to disarm an active shooter. In the recent mass shooting at Tops supermarket in Buffalo, NY, an armed security guard on site tried to stop the shooter - at least one of his shots hit the gunman but did not disable him because of his body armor. The shooter had reportedly researched the type of firearm the security guard would be carrying to ensure he had the appropriate body armor to protect him from the gun's bullets. Shortly after the Buffalo shooting, the New York state legislature passed a bill significantly limiting the sale of body armor.

   California's gun violence restraining order (GVRO) process allows a court to prohibit someone from possessing a firearm or ammunition for a temporary period of time.

   Prior to issuing an ex parte gun violence restraining order, a court must examine the petitioner or review a written affidavit from the petitioner signed under oath. In its evaluation of the evidence, a court is required to consider all evidence of recent threats of violence or

acts of violence, any violations of emergency protective orders or other unexpired protective orders, certain types of convictions, or any pattern of violent acts or violent threats within the past 12 months.

During that process of determining whether grounds for a GVRO exist, the court may consider any other evidence of increased risk for violence, including but not limited to, evidence of unlawful and reckless use, display, or brandishing of a firearm; the history of use, attempted use, or threatened use of physical force against another person; a prior arrest for a felony offense; a history of a violation of an emergency protective order or other protective orders; documentary evidence of recent criminal offenses involving controlled substances or alcohol of ongoing abuse of controlled substances or alcohol; or evidence of recent acquisition of firearms, ammunition, or other deadly weapons.

If the court determines that grounds exist to issue an ex parte GVRO, it issues an order prohibiting the subject of the petition from possessing, purchasing, or receiving a firearm or ammunition for up to 21 days from the date of the order.

Body armor's primary purpose is to provide a defensive barrier for one's body while in the line of fire. Purchase or acquisition of body armor is a signal that a person anticipates requiring protection from bullets. When combined with recent threats or violent behavior, acquisition of body armor can be an important indicator of an increased risk for gun violence. Indeed, the San Jose Police Department reported that they found tactical body armor along with assault-style rifles and hundreds of rounds of ammunition after obtaining a gun violence restraining order in May 2022."

6) **Related Legislation**:

   a) AB 92 (Connolly), prohibits a person from purchasing or possessing body armor if state law prohibits them from possessing a firearm and allows them to petition for an exemption. AB 92 is pending hearing in the Assembly Appropriations Committee.

   b) SB 762 (Becker), states intent to further strengthen and expand GVRO provisions. SB 762 is in the Senate Rules Committee.

7) **Prior Legislation**: AB 1014 (Skinner), Chapter 872, Statutes of 2014, allows the court to issue a GVRO and established the process by which the orders can be obtained.

REGISTERED SUPPORT / OPPOSITION:

Support

Everytown for Gun Safety Action Fund
March for Our Lives Action Fund
San Diegans for Gun Violence Prevention

Opposition

Gun Owners of California, INC.

Riverside County Sheriff's Office

2 Private Individuals

Analysis Prepared by: Mureed Rasool / PUB. S. / (916) 319-3744

Date of Hearing: March 14, 2023
Counsel: Andrew Ironside

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 304 (Holden) – As Introduced January 26, 2023

SUMMARY: Requires the Judicial Council to establish judicial training programs on all aspects of domestic violence, and transfers responsibility for approving batterer's intervention programs from probation departments to the Department of Justice (DOJ). Specifically, **this bill**:

1) Requires the Judicial Council to establish judicial training programs for individuals who perform duties in domestic violence matters, including, but not limited to, judges, referees, commissioners, mediators, and others as deemed appropriate by the council.

2) Requires the training programs to include a domestic violence session in any orientation session conducted for newly-appointed or elected judges, an annual training session in domestic violence, and periodic updates.

3) Requires the training programs to include instruction in all aspects of domestic violence, including, but not limited to:

    a) Implicit and explicit bias related to victims and perpetrators of domestic violence;

    b) Trauma;

    c) Coercive control;

    d) Victim and perpetrator behavior patterns and relationship dynamics within the cycle of violence;

    e) The detriment to children residing with a person who perpetrates domestic violence; and,

    f) That domestic violence can occur without a party seeking or obtaining a restraining order, without a substantiated child protective services finding, and without other documented evidence of abuse.

4) Requires a minimum of 25 hours to be required for the orientation session, and a minimum of 20 hours to be required every three years thereafter.

5) Requires the court to inform a defendant who is required to attend a batterer's intervention program as a requirement of probation, of the availability of a program fee waiver if the defendant does not have the ability to pay the fee.

6) Clarifies that a program provider must report a violation of the terms of a protective order by the defendant within seven business days.

7) Requires the probation department to promptly notify each program in which the defendant is required to participate as a part of probation of all of the court-mandated programs in which the defendant is required to participate and all of the defendant's probation violations pertaining to a domestic violence offense.

8) Requires a court to provide a defendant with a selection of available program providers, including the program providers' standard fees and sliding fee scales, before the defendant agrees to the conditions of probation.

9) Requires program providers to post publicly, including on an internet website, a comprehensive description of their sliding fee scale.

10) Transfers the responsibility for approving batterer's intervention programs from probation departments to the DOJ.

11) Requires DOJ, beginning on April 1, 2024, to oversee the probation departments and program providers to ensure compliance with state law.

12) Requires DOJ to be responsible for all of the following:

    a) Collaborating with Judicial Council and relevant stakeholders to set program provider standards;

    b) Approving, monitoring, and renewing approvals of program providers;

    c) Conducting periodic audits of probation departments and program providers;

    d) Developing comprehensive, statewide standards through regulations, including, but not limited to:

        i) Program provider curricula; and,

        ii) Training for social workers, counselors, probation departments, peace officers, and others involved in the enforcement of domestic violence crimes or the monitoring or rehabilitation of individuals convicted of domestic violence crimes in all aspects of domestic violence, including, but not limited to:

            (1) Implicit and explicit bias related to victims and perpetrators of domestic violence;

            (2) Trauma and emotional abuse;

            (3) Coercive control; and,

            (4) Victim and perpetrator behavior patterns and relationship dynamics within the cycle of violence.

e) Identifying and developing a comprehensive final assessment tool to assess whether a defendant has satisfactorily completed the requirements of the program.

f) Analyzing the effectiveness of programs, including, but not limited to, through the tracking of relevant offender and program data.

13) Requires Judicial Council, by April 1, 2024, to establish guidelines and training for judges to ensure the consistent adjudication of probation violations.

14) Defines "program provider" as a provider of a batterer's program, as specified, or if none is available, another appropriate counseling program.

15) Provides that program providers do not include alcohol or drug counseling or alcohol and drug programs, as specified.

16) Includes legislative findings and declarations.

EXISTING LAW:

1) Requires a person granted probation for domestic violence to serve a minimum period of probation of 36 months, which may include a period of summary probation as appropriate. (Pen. Code, 1203.097 subd. (a)(1).)

2) Requires the term of probation for domestic violence to include a criminal court protective order protecting the victim from further acts of violence, threats, stalking, sexual abuse, and harassment, and, if appropriate, containing residence exclusion or stay-away conditions. (Pen. Code, 1203.097, subd. (a)(2).)

3) Requires the term of probation for domestic violence to include notice to the victim of the disposition of the case. (Pen. Code, 1203.097, subd. (a)(3).)

4) Requires the term of probation for domestic violence to include booking the defendant within one week of sentencing if the defendant has not already been booked. (Pen. Code, 1203.097, subd. (a)(4).)

5) Requires a person granted probation for domestic violence to successfully complete a batterer's program, as specified, or if none is available, another appropriate counseling program designated by the court, for a period not less than one year with periodic progress reports by the program to the court every three months or less and weekly sessions of a minimum of two hours class time duration. (Pen. Code, 1203.097, subd. (a)(6).)

6) Requires a person granted probation for domestic violence to attend consecutive weekly sessions of a batterer's program, unless granted an excused absence for good cause by the program for no more than three individual sessions during the entire program. (Pen. Code, 1203.097, subd. (a)(6).)

7) Requires completion of the batterer's program within 18 months, unless, after a hearing, the court finds good cause to modify the requirements of consecutive attendance or completion

within 18 months. (Pen. Code, 1203.097, subd. (a)(6).)

8) Requires the batterer's program, if it finds that the defendant is unsuitable, to immediately contact the probation department or the court. (Pen. Code, 1203.097, subd. (a)(9).)

9) Requires the probation department or the court, if notified that the batterer's program has found that the defendant is unsuitable, to either recalendar the case for hearing or refer the defendant to an appropriate alternative batterer's program. (Pen. Code, 1203.097, subd. (a)(9).)

10) Requires a court, upon recommendation of the batterer's program, to order defendant to participate in additional sessions throughout the probationary period, unless it finds that it is not in the interests of justice to do so, states its reasons on the record, and enters them into the minutes. (Pen. Code 1203.097, subd. (a)(10)(A).)

11) Requires the batterer's program to immediately report a violation of the terms of the protective order, including any new acts, including any new acts of violence or failure to comply with the program requirements, to the court, the prosecutor, and, if formal probation is ordered, to the probation department. (Pen. Code, 1203.097, subd. (a)(10)(B).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Despite its efforts over the last three decades, the California Legislature and other state agencies have struggled to implement effective domestic violence diversion tactics. An investigation by the California State Auditor of our batterer intervention programs has revealed a disparity in oversight on the part of probation departments and courts.[1] This, coupled with the insufficient training for those involved in handling domestic violence incidents, has very real implications for domestic violence survivors. This widespread issue affects more people than we realize. Between 2012 and 2021 approximately 1.6 million calls for domestic-violence related assistance were made in California.[2] We already have the infrastructure to help, but are falling short in its oversight and implementation. It is pertinent we revise our batterer intervention system to make it more effective in protecting domestic violence survivors and rehabilitating domestic violence offenders."

2) **State Auditor's Report on Batterer Intervention Programs:** In October 2022, the California State Auditor issued its audit of the state's batterer interventions programs. The auditor examined the administration and oversight by the probation departments and courts in five counties—Alameda, Contra Costa, Del Norte, Los Angeles, and San Joaquin. The Auditor found that persons convicted of domestic violence were "far less likely to reoffend" if they completed a batterer's intervention program. However, nearly 50 percent of program participants reviewed by the Auditor did not complete the program, and most of those

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[1] California State Auditor. (2022). Batterer Intervention Programs. Report 2021-113, 3-7.

[2] State of California Department of Justice. 2023. Domestic Violence-Related Calls for Assistance Counties: All. Years: 2012 - 2021. Retrieved Jan. 3, 2023, from https://openjustice.doj.ca.gov/exploration/crime-statistics/domestic-violence-related-calls-assistance.

participants later reoffended. (Cal. State Auditor, *Batterer Intervention Programs: State Guidance and Oversight Are Needed to Effectively Reduce Domestic Violence*, p. 1 <https://www.auditor.ca.gov/pdfs/reports/2021-113.pdf> [last visited Mar. 9, 2023].)

The State Auditor found "probation departments did not consistently assess all offenders for underlying issues, such as mental health or substance abuse concerns, that might interfere with an offender's ability to complete a program." (*Id.* at 2.) It also reported that "probation departments, program providers, and courts generally did not hold many of the offenders we reviewed accountable for probation and program violations." (*Ibid.*) Moreover, "even when notified about offenders' violations, the courts, in some instances, referred the offenders back to a program without imposing additional consequences," which according to the Auditor "likely weakens the impact of programs." (*Ibid.*)

Specifically, the Auditor noted that "none of the five probation departments had established sufficient standards, policies, and procedures for overseeing program providers and ensuring program compliance." (*Ibid.*) As a result, "program providers did not supervise offenders appropriately or report required information." (*Ibid.*) The probation departments generally failed to address deficiencies in compliance with law by batterer's program providers. (*Ibid.*)

Based on these findings, the Auditor recommended, among other things, "designating a statewide agency" to provide oversight and guidance to program providers. It also recommended requiring the Judicial Council to establish judicial training programs on all aspects of domestic violence; requiring batterer's intervention programs to "publicly post a comprehensive description of their sliding fee scales; and, requiring "courts to provide each offender with a selection of available program providers" and of "the availability of fee waivers for those who may not have the ability to pay for a program." (*Ibid.*)

This bill would codify these recommendations by the State Auditor.

3) **DOJ Oversight of Batterer's Intervention Programs:** The State Auditor concluded that the efficacy of batterer's intervention programs would benefit from transferring oversight authority from county probation departments and courts to the state. According to the State Auditor, county probation departments had not "adequately approved, monitored, or reviewed program providers." (*Id.* at p. 48.) "Centralizing such oversight would create consistency and allow the State to select only the most qualified and effective providers." (*Ibid.*) It added:

> [A] statewide oversight agency in California could provide comprehensive guidance to program providers, rather than the inconsistent and inadequate guidance providers currently receive from county probation departments. The oversight agency could also standardize program curriculum and instructor qualification requirements; track and analyze offender and program data; and collaborate with relevant stakeholders to recommend quality improvements to ensure that programs achieve the desired outcomes. Finally, the oversight agency could work with the Judicial Council of California (Judicial Council) to ensure that the courts and judges have sufficient guidance on holding offenders accountable when they violate the conditions of their probation. Without this additional oversight, it will be difficult for policymakers to make informed decisions about how to improve California's approach to reducing domestic violence.

(*Id.* at 3.)

The State Auditor considered four agencies for as candidates for assuming this authority—the Board of State and Community Correction (BSCC), the California Department of Public Health (CDPH), the California Department of Social Services, and the DOJ. None of the agencies currently have significant involvement with the batterer intervention system, nor did they express a "strong opinions regarding the most appropriate state oversight agency." (*Id.* at 49.) Ultimately, the State Auditor concluded that DOJ was "best positioned to oversee programs statewide." (*Id.* at pp. 49-50.) According to the State Auditor:

> In 2003 the Attorney General convened a 26-member task force to learn how local criminal justice systems have carried out their responsibilities to, among other things, hold offenders accountable for domestic violence crimes. In 2005 the task force reported that it found problematic practices related to program standards and program provider performance. Further, Justice has a research center that is dedicated to applying a scientific approach to legal review, policy and data analysis, and empirical studies leading to data-driven decisions through collaboration. Because the Attorney General is the chief law enforcement officer of the State and because Justice is already responsible for tracking criminal data, such as domestic violence crimes, we believe that Justice is well positioned to lead statewide efforts to reduce domestic violence.

(*Id.* at p. 50.)

Despite expressing agreement that the state should assume responsibility for oversight of batterer's intervention programs, there appears to be some disagreement that DOJ is well positioned to assume that role. The California Initiative for Health Equity & Action (Cal-IHEA), for example, recommended placing oversight in hands of the CDPH. In a recent report, Cal-IHEA wrote:

> Several programs and initiatives focused on reducing violence exist at the state level but are overseen by separate agencies. Consolidating these programs in a centralized violence prevention and intervention agency within CDPH will streamline efforts to coordinate IPV services and funding while prioritizing a public health approach. The agency would accredit intervention programs and ensure standardization of program evaluation metrics. Additionally, the proximity of an agency within CDPH to other public health services should strengthen referral pathways across associated agencies, thereby promoting early intervention and care coordination.
>
> This agency would collaborate with existing coalitions in California…to ensure that the standards for intervention program are informed by survivors and advocates. To initiate the transition towards a statewide agency, California should establish a public/private sector workgroup consisting of survivors, people who have successfully completed a BIP, stakeholders for advocacy groups, CDPH, BIP providers, and probation officers who currently oversee county BIPs.

(Pattabhiraman et. al, *State Innovation to Prevent the Recurrence of Intimate Partner Violence*, Health Policy Report, California Initiative for Health Equity & Action (Sept. 2021) p. 9 <https://abmoc.org/wp-content/uploads/2022/11/preventingipv.pdf> [last visited Mar. 9, 2023].)

Indeed, DOJ expressed concern to the State Auditor that it might not be the appropriate agency to oversee batterer's intervention programs. According to the Auditor's report, DOJ claimed "the work involved would not fit clearly into any of its existing sections and…it believes that another state agency might be able to more appropriately perform the required responsibilities." (Auditor's Report, *supra*, p. 50.)

This bill would implement the State Auditor's recommendation to transfer oversight authority of batterer's intervention programs to DOJ.

4) **Alternatives Batterer's Intervention Program Pilot Program:** This bill would transfer responsibility for oversight of batterer's intervention programs from probation departments to the DOJ. This responsibility would include approving, monitoring, and renewing approvals of program providers, and developing comprehensive statewide standards for batterer's intervention programs.

   It should be noted that Penal Code section 1203.99 authorizes six counties—Napa, San Luis Obispo, Santa Barbara, Santa Clara, Santa Cruz, and Yolo—to provide programming to domestic violence offenders under specified circumstances that do not comply with current batterer's intervention program requirements. Authorization for the pilot programs is set to expire July 1, 2023. AB 479 (B. Rubio) would extend the sunset date to July 1, 2026.

   This bill likely will not limit the authority of the designated counties to continue offering alternative programming to domestic violence offenders.

5) **Argument in Support**: According to the *Little Hoover Commission*, "In its 2021 report, *Beyond the Crisis: A Long-Term Approach to Reduce, Prevent, and Recover from Intimate Partner Violence*, the Commission found that California's batterer intervention programs were "structured in such a way that it's nearly down to chance – except the odds are stacked against participants who are not financially secure – whether the program will work for a participant or leave them indebted in the county lockup." Among other concerns, the Commission found the programs were not always available in the geographic region or language offenders needed, affordable for lower-income Californians, nor formatted in in a manner that addressed the spectrum of genders and sexualities found among Californians.

   "The Commission recommended that the state review its requirements for batterer intervention programs to determine if they facilitate rehabilitation; begin a process to determine how to tailor rehabilitative services to an individual's needs; and, ensure that rehabilitation is not contingent on an individual's ability to pay.

   "We believe AB 304 would help implement these recommendations; consequently we support this legislation."

   Argument in Opposition: According to Chief Probation Officers of California, "We share your desire to see domestic violence programs serve to reduce recidivism and address interpersonal violence. CPOC agrees with you and our opposition is not reflective of the notion that changes are not needed. It is for these reasons that in 2018 CPOC co-sponsored AB 372 (Stone, Chapter 290, Statutes of 2018), which established pilot programs in the Counties of Napa, San Luis Obispo, Santa Barbara, Santa Clara, Santa Cruz, and Yolo to

update domestic violence programs by applying evidence-based approaches to curriculum that reduce recidivism and address criminogenic needs.

"There are many complexities involved in addressing interpersonal violence and it's important that programming curriculum reflect the varying needs and risks presented. This pilot program uses evidence-based curriculum to enhance client engagement and meet the treatment, risk and criminogenic needs of the individual. We believe that these programs represent an important model that meets the myriad of goals pertaining to these programs.

"There are important discussions around provisions in the bill pertaining to how best to strengthen processes on ensuring program accountability and completion. However, we are opposed unless amended to the provisions that would remove county probation from certifying and approving these programs due to the potential negative impacts resulting from separating the local delivery of service from the ability to certify the programs and the potential loss of providers that we may see as a result.

"Probation and counties work closely and earnestly to help providers identify or use local meeting spaces and additional supports that streamlines and coordinates local services and capacity. Transferring certification away from where the services are delivered impedes the county's ability to be locally responsive to the needs and capacity pertaining to these programs.

"We believe there are shared values and programmatic changes that can address the goals underlying this bill, but we see the transferring of program certification as further bifurcating the conversations and efforts around how to ensure these programs are most reflective of evidence-based and risk-based approaches to interpersonal violence and recidivism."

6) **Related Legislation**:

   a) AB 467 (Gabriel) would clarify that the sentencing court in the county in which a domestic violence restraining order was issued may modify the order if the court is convinced beyond a reasonable doubt that the modification is in the best interest of the victim. AB 467 will be heard in this committee today.

   b) AB 479 (B. Rubio) would eliminate the sunset provision on the law allowing the Counties of Napa, San Luis Obispo, Santa Clara, Santa Cruz, and Yolo to offer programs that do not comply with the requirements of the batterer's program so long as the programs comply with specified conditions. AB 479 will be heard in this committee today.

7) **Prior Legislation**:

   a) SB 616 (S. Rubio), of the 2021-2022 Legislative Session, would have expanded domestic violence educational requirements for judges, referees, commissioners, mediators, child custody recommending counselors, and evaluators involved in domestic violence proceedings. SB 616 was held on the Senate inactive file.

   b) AB 372 (Stone), Chapter 290, Statutes of 2018, authorized six counties, effective July 1, 2019, to offer an alternative program, as specified, than the one required under current

law for individuals convicted of domestic violence.

c) SB 218 (Solis), Chapter 662, Statutes of 1999, provided, among other things, authorization for the court to order a restrained person to participate in a batterer intervention program that has been approved by the probation department as meeting specified standards.

REGISTERED SUPPORT / OPPOSITION:

Support

California Attorneys for Criminal Justice
California Public Defenders Association (CPDA)
Little Hoover Commission

Opposition

Chief Probation Officers of California

Analysis Prepared by: Andrew Ironside / PUB. S. / (916) 319-3744

Date of Hearing: March 14, 2023
Counsel: Liah Burnley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 391 (Jones-Sawyer) – As Introduced February 2, 2023

SUMMARY: Requires a person making a child abuse or neglect report, who is not a mandated reporter, to provide specified information in the report, including their name, telephone number, and information that gave rise to the suspicion of child abuse or neglect. Specifically, **this bill:**

1) Deletes the provision that a person reporting child abuse or neglect, who is not a mandated reporter, is not required to disclose their name.

2) Requires a person reporting suspected child abuse or neglect, who is a not a mandated reporter, to include all of the following information in the report:

   a) Their name;

   b) Their telephone number;

   c) The information that gave rise to the reasonable suspicion of child abuse or neglect; and,

   d) The source of the information that gave rise to the reasonable suspicion of child abuse or neglect.

3) Prohibits the transmission of a report of suspected child abuse or neglect from person who is not a mandated reporter to a local child protective service for investigation unless the reporter's name and telephone number are provided.

EXISTING LAW:
1)
1) Establishes the Child Abuse and Neglect Reporting Act. (Pen. Code, § 11164.)

2) Defines "Child" as a person under 18 years old. (Pen. Code, § 11165.)

3) Defines "Child abuse or neglect" as physical injury or death inflicted by other than accidental means upon a child by another person, sexual abuse, neglect, the willful harming or injuring of a child or the endangering of the person or health of a child, and unlawful corporal punishment or injury. Child abuse or neglect does not include a mutual affray between minors or an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer. (Pen. Code, § 11165.6.)

4) Lists the categories of individuals who are mandated reporters. (Pen. Code, § 11165.7.)

5) Permits reports of suspected child abuse or neglect to be made to any police department or sheriff's department, not including a school district police or security department, county probation department, if designated by the county to receive mandated reports, or the county welfare department. (Pen. Code, § 11165.9.)

6) Provides that agencies that are required to receive reports of suspected child abuse or neglect may not refuse to accept a report of suspected child abuse or neglect from a mandated reporter or another person and are required to maintain a record of all reports received. (Pen. Code, § 11165.9.)

7) Requires a mandated reporter to make a report whenever, in their professional capacity or within the scope of their employment, they have knowledge of or observe a child whom they know or reasonably suspect has been the victim of child abuse or neglect. (Pen. Code, § 11166.)

8) Allows any other person who is not a mandated reporter, who has knowledge of or observes a child whom the person knows or reasonably suspects has been a victim of child abuse or neglect, to report the known or suspected instance of child abuse or neglect. (Pen. Code, § 11166, subd. (g).)

9) Requires reports of known or reasonably suspected child abuse or neglect to include the name, business address, and telephone number of the mandated reporter; the capacity that makes the person a mandated reporter; and the information that gave rise to the knowledge or reasonable suspicion of child abuse or neglect and the source or sources of that information. (Pen. Code, § 11167, subd. (a).)

10) Provides that persons who are not mandated reporters are not required to include their names when reporting suspected abuse or neglect. (Pen. Code, § 11167, subd. (f).)

11) States that the identity of all persons who report shall be confidential and may be disclosed only as follows:

    a. To agencies receiving or investigating mandated reports;

    b. To the prosecutor in a criminal prosecution;

    c. To the prosecutor in specified proceedings arising from alleged child abuse;

    d. To counsel appointed in specified child dependency proceedings;

    e. To the county counsel or prosecutor in specified and custody and child dependency proceedings;

    f. To a licensing agency when abuse or neglect in out-of-home care is reasonably suspected;

    g. When the persons waive confidentiality; or,

    h. By court order. (Pen. Code, § 11167, subd. (d)(1).)

12) Prohibits any agency or person from disclosing the identity of any person who reports to that person's employer, except with the employee's consent or by court order. (Pen. Code, § 11167, subd. (d)(2).)

13) Provides that a representative of a child protective services agency performing an investigation of a report of child abuse or neglect at the time of the initial contact with the individual who is subject to the investigation, shall advise the individual of the complaints or allegations against them, in a manner that is consistent with laws protecting the identity of the reporter. (Pen. Code, § 11167, subd. (e).)

14) Provides that reports of child abuse or neglect investigative reports that result in a summary report being filed with the Department of Justice shall be confidential and may be disclosed only as specified. (Pen. Code, § 11167.5.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "The anonymous child abuse and neglect reporting system has created an opportunity for abusive partners to make false reports and harass their victims. The resulting investigations are invasive, disruptive and frightening. If families are lucky enough to remain together, they are left with lingering fear and trauma. We cannot allow perpetrators of domestic violence to use the reporting system against the very children it is intended to protect. False reports waste time and resources that could be spent on actual cases of child abuse and they compound the suffering of families that are already struggling. This bill seeks to address these intentionally false reports in order to shield families from harassment and more effectively use the resources of Child Protective Services."

2) **Child Abuse and Neglect Reporting Act**: The Child Abuse Neglect and Reporting Act (Pen. Code, §§ 11164 et seq.) provides "a comprehensive reporting scheme aimed toward increasing the likelihood that child abuse victims [will] be identified." (*Ferraro v. Chadwick* (1990) 221 Cal.App.3d 86, 90.) "The Act requires persons in positions where abuse is likely to be detected to report promptly all suspected and known instances of child abuse to authorities for follow-up investigation." (*Ibid.*; accord, *James W. v. Superior Court* (1993) 17 Cal.App.4th 246, 253-254.)

   The Act identifies over 40 separate categories of mandated reporters. (Pen. Code, § 11165.7, subd. (a)(1)-(49).) A mandated reporter must report known or reasonably suspected child abuse or neglect to a designated agency, specifically "any police or sheriff's department, not including a school district police or security department, county probation department, if designated by the county to receive such reports, or county welfare department." (Pen. Code, § 11166, subd. (a).) Failure to make the required report is a misdemeanor. (Pen. Code, § 11166, subd. (c).)

3) **Reports of Child Abuse or Neglect by Nonmandated Reporters**: The Child Abuse Neglect and Reporting Act also permits any person that is not a mandated reporter, who has knowledge of, or reasonably suspects a child has been a victim of child abuse or neglect, to

report the known or suspected instance of child abuse or neglect. (Pen. Code, § 11166, subd. (g).)

Unlike mandated reporters of child abuse or neglect, persons who are not mandated reporters are not required to include their names and contact information in the report. (Pen. Code, § 11167, subd. (f).) This bill would require their identifying information, specifically their name, phone number, information that gave rise to the suspected abuse or neglect, and the source of that information.

4) **Need for this Bill**: Anonymous reporting allows individuals to make allegations of child abuse or neglect without disclosing any identifying information, making it easy to falsify a claim. For example, there have been reports of individuals making reports of child abuse or neglect under the shield of anonymity to settle a grudge. Advocates for domestic violence survivors, in particular, have long been concerned about the role such reports play in keeping women in violent relationships and in punishing them when they leave them. Domestic violence advocates, "see the threat of false reports to child welfare and then actual malicious and retaliatory reporting by batterers at all different stages of abusive relationships, and we see it frequently," (Blustain R., *False Abuse Reports Trouble Child Welfare Advocates* (Oct. 14, 2013) < https://citylimits.org/2013/10/04/false-abuse-reports-trouble-child-welfare-advocates/> [as of March 2, 2023].)

Even in the most well intended cases of child abuse and neglect reporting, an inherent flaw is that the public is not trained in what to report. Lay people have a higher probability of making baseless reports simply because they do not understand the signs and definitions of child maltreatment. (Worley, N. K., & Melton, G. B., *Mandated Reporting Laws a Child Maltreatment: The Evolution of a Flawed Policy Response* (2013) at p. 103–118).) In contrast, mandated reporters receive extensive trainings, and they are required to provide their names and employment information so they can be held accountable for proper reporting and evidence gathering. (Dale Margolin Cecka, *Abolish Anonymous Reporting to Child Abuse Hotline* (2014) 64 Cath. U. L. Rev. 51, 63.)

In other contexts, before arresting or detaining anyone on the basis of any anonymous tip, police must corroborate aspects of the allegation made by the anonymous caller. (*Florida v. J.L.* (2000) 529 U.S. 266 [a "bare-bones" tip from an anonymous source providing no details regarding how the source knew about the crime was not reliable to justify investigative detention].) However, law enforcement and child welfare agencies have an opposite mandate: they are required to investigate reports of child abuse and neglect. (See e.g., Pen. Code, §§ 11166.3, 11165.14, 1165.9.) Agencies that are required to receive reports of suspected child abuse or neglect may not refuse to accept a report of suspected child abuse or neglect from a mandated reporter or any other person unless otherwise authorized. (Pen. Code, § 11165.9.)

Unfounded cases of child abuse and neglect can lead to families being stigmatized by the community, parents losing employment because of the demands of formally refuting abuse allegations, or unnecessary removal of children from their homes to be placed in foster care, itself a risk factor for psychological harm. The investigation itself, even it fails to end in substantiation, also can fractionate the family and destroy relationships with people outside the family. Indeed it inevitably results in a substantial invasion of privacy and almost certainly increases anxiety and helplessness. (Worley, N. K., & Melton, G. B., *supra,* at p.

103, 107.)

This bill would require a nonmandated reporter of child abuse or neglect to disclose their name and telephone number, and, significantly, the information that gave rise to the report and the source of the information that give rise to the report. In so doing, the agencies can more accurately substantiate claims of child abuse or neglect and more efficiently manage their caseloads. Additionally, requiring a reporter to disclose their names and information giving rise to the report could deter unfounded, baseless reports that are merely intended to harass parents and families.

Notably this bill would abolish anonymity *but not confidentiality*. The Penal Code mandates that the identity of "all persons" who report shall be confidential and may be disclosed only to specified agencies, prosecutors, and counsel in connection with investigations of child abuse and child dependency proceedings. (Pen. Code, § 11167, subd. (d)(1).) State law also specifically prohibits an investigator of a report from disclosing the identity to the subject of the investigation and prohibits any agency from disclosing the identity of any person who reports to that person's employer, except with the employee's consent or by court order. (Pen. Code, §§ 11167, subds. (e) & (d)(2).)

5) **Argument in Support**: According to *Root and Rebound*, "anonymous reports disproportionately affect low-income people of color. Research has shown that black children are twice as likely to be reported as white children and minority parents are more likely to receive higher levels of state intervention following a report. False reports compound the suffering of families that are already struggling. Confidential reporting would greatly increase the likelihood that resources are spent on legitimate cases of child abuse or neglect. …

"The problem of harassment in reporting could be solved by simply requiring all reporters of child abuse and neglect to provide their names and contact information. The new confidential reporting system would maintain strict confidentiality around their identity. This would discourage intentional fake reporting and allow child protective services to better assess allegations."

6) **Related Legislation**:

a) AB 1028 (McKinnor), would remove the requirement that a health practitioner make a report to law enforcement when they suspect a patient has suffered physical injury caused by assaultive or abusive conduct. AB 1028 is pending hearing in this Committee.

b) AB 1544 (Lackey), would authorize a police or sheriff's department to which a report of suspected child abuse or severe neglect is made to forward to the Department of Justice a report in writing of its investigation that is determined to be substantiated. AB 1544 is pending referral.

c) SB 47 (Roth), would require an agency that receives a report of known or suspected child abuse to take specified actions, including, among other things, requiring an investigator to make contact with the person who made the report. SB 47 is pending in Senate Public Safety Committee.

7) **Prior Legislation**:

a) AB 2085 (Holden), Chapter 770, Statutes of 2022, limited the definition of "general neglect" for the purposes of the Child Abuse and Neglect Reporting Act, to only include circumstances where the child is at substantial risk of suffering serious physical harm or illness.

b) AB 717 (Ammiano), Chapter 468, Statutes of 2011, among other things, revised the definition of a "substantiated report" to exclude a report where the investigator who conducted the investigation found the report to be false, inherently improbable, to involve an accidental injury, or to not constitute child abuse or neglect, as specified.

REGISTERED SUPPORT / OPPOSITION:

Support

A New Way of Life Re-entry Project
Aouon Orange County
Los Angeles Dependency Lawyers, INC.
Root & Rebound
Western Center on Law & Poverty

Opposition

None

Analysis Prepared by: Liah Burnley / PUB. S. / (916) 319-3744

Date of Hearing: March 14, 2023
Counsel: Mureed Rasool

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 423 (Maienschein) – As Introduced February 6, 2023

SUMMARY: Requires the Attorney General (AG) to convene a working group to study the issue of cognitively impaired people who wander away. Specifically, **this bill**:

1) States that the AG must convene a working group within its Missing and Unidentified Persons Section.

2) Provides that the working group will study cognitively impaired people, including those with dementia or autism, who wander away or become confused about their surroundings.

3) Mandates that the working group will be chaired by the director responsible for missing persons in California, include no more than 20 members appointed by the AG, and shall include representatives from the following:

   a) California State Sheriffs' Association;

   b) California Highway Patrol's Emergency Notification and Tactical Alert Center;

   c) California Firefighters' Association;

   d) California Police Chiefs Association;

   e) California State Association of Counties;

   f) An organization servicing patients with Alzheimer's disease;

   g) An organization servicing persons with autism;

   h) A family member each of persons with Alzheimer's and autism;

   i) California Department of Aging;

   j) State Department of Social Services that coordinates with adult protective services;

   k) California Hospital Association;

   l) L.A. Found initiative;

   m) Mental Health Services Division of the State Department of Health Care Services;

n) League of California Cities;

o) State Department of Developmental Services; and,

p) Office of the State Long-Term Care Ombudsman.

4) Reimburses members for travel and other necessary expenses, but does not provide compensation for participation in the group.

5) Requires the working group to meet from 4 to 6 times a year and to submit a report to the Legislature by June 30, 2026, discussing the following topics:

a) Training for professional and family caregivers;

b) Technological solutions;

c) Coordination of social services and law enforcement resources; and,

d) Public awareness of wandering.

6) Sunsets the working group on January 1, 2027.

EXISTING LAW:

1) Finds and declares that elders and adults with mental or physical disabilities are restricted in the ability to carry out normal activities or protect their rights and deserve special consideration and protection. (Pen. Code, § 368.)

2) Requires the Department of Justice (DOJ) to have a director responsible for coordinating California's response to missing persons. (Pen. Code, § 14208.)

3) Requires the DOJ to operate a statewide hotline to receive information regarding missing children and at-risk adults, make missing persons posters, as specified, and to relay the information to appropriate law enforcement agencies. (Pen. Code, § 14210.)

4) Requires all local law agencies, upon receiving a missing-person's report involving an adolescent or at-risk adult, to broadcast a "Be On the Lookout" bulletin without delay, and to transmit a report to the DOJ. (Pen. Code, § 14211, subds. (b) & (c).)

5) Ensures that older individuals and functionally impaired adults receive needed services that will enable them to maintain the maximum independence permitted by their functional ability and remain in their own home or communities for as long as possible. (Welf. & Inst. Code, § 9450.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 423 is an important step in addressing the risk of wandering and protecting the lives of some of our most vulnerable communities. This bill would help California better support the thousands of people living with a cognitive impairment and their family caregivers."

2) **Wandering of Individuals with Cognitive Impairment**: Wandering, also referred to as elopement, generally occurs when someone leaves a safe area or responsible caregiver; it goes beyond the brief amount a time that a toddler typically might run off from a caregiver. For adults with dementia or Alzheimer's, the rates of wandering range from 46% to 71%. The majority of patients with dementia failed to remember their way back to the original location where they got lost or initiating a conversation with other people on the street, making the consequences of getting lost be hazardous. (Kelvin K. Tsoi et al. *How can we better use Twitter to find a person who got lost due to dementia?* (Apr. 18, 2018.) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6550184/#CR26> [as of Mar. 6, 2023].) Some literature on the topic has indicated that up to half of adults with dementia who wander and are not found within 24 hours will suffer serious injury or death. (Meredeth A Rowe et al. *Persons with dementia missing in the community: Is it wandering or something unique?* (Jun. 5, 2011.) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3141319/#B2> [as of Mar. 6, 2023].)

   Wandering also poses dangers for children and youth who have autism and intellectual disabilities. The Centers for Disease Control and Prevention (CDC) states that about half of children and youth with autism spectrum disorder were reported to wander, and of those, about a quarter were missing long enough to cause concern and were commonly in danger of drowning or traffic injury. (CDC. *Disability and Safety: Information on Wandering (Elopement)*. (Sept. 18, 2019.) <https://www.cdc.gov/ncbddd/disabilityandsafety/wandering.html> [as of Mar. 6, 2023].)

   These results highlight the urgent need to develop interventions to reduce the risk of elopement, to support families coping with this issue, and to train child care professionals, educators, and first responders who are often involved when elopements occur. This bill would require a working group be convened within the DOJ to study the issue of wandering and offer potential solutions to help try to address it.

3) **DOJ Missing and Unidentified Persons Section**: The DOJ's Missing and Unidentified Persons Section assists law enforcement agencies throughout California in finding missing persons. It keeps statewide files on missing persons that include dental records, photographs, and descriptions of physical characteristics. (DOJ. *Missing and Unidentified Persons Section.* <https://oag.ca.gov/missing/mups> [as of Mar. 7, 2023].)

   The Missing and Unidentified Persons Section also issues annual reports detailing missing children and adults. (DOJ. *Missing Persons Statistics*. <https://oag.ca.gov/missing/stats> [as of Mar. 7, 2023].) According to their 2022 report for adults, there were roughly 1,800 dependent adults (i.e. adults with physical or mental limitations such as Alzheimer's) who went missing each year from 2018 to 2022. (*Ibid.*) Unfortunately their 2022 report for missing children does not have a category for children with cognitive disabilities. (*Ibid.*) However, there were approximately 246 children that became lost each year from 2018 to 2022. (*Ibid.*)

This bill would require that a working group on cognitively impaired people who wander be convened in the DOJ's Missing and Unidentified Persons Section.

4) **Argument in Support**: According to the bill's cosponsors, *Alzheimer's Los Angeles*, *Alzheimer's Orange County*, and *Alzheimer's San Diego*, "...Wandering is a term used to describe getting lost and becoming disoriented. It is a common behavior associated with Alzheimer's disease and other dementias. Often overlooked, wandering is dangerous, and the consequences can be deadly. Over sixty percent of those living with Alzheimer's disease will wander at some point. Finding a missing person quickly is critical because the survival rate drops dramatically the longer it takes to find the person.

"Wandering or elopement is also a serious safety issue for many children with cognitive impairment or disabilities, such as those with autism spectrum disorder. An estimated 49 percent of children with autism will engage in wandering behavior. Consequences for wandering in children can also be deadly. According to the National Autism Association, in 2011 accidental drowning accounted for 91 percent of the total U.S. deaths reported of children with autism ages 14 and younger, subsequent to wandering or elopement.

"In your district, Alzheimer's San Diego partnered with the San Diego Sherriff's Department to create the Take Me Home Registry. This program helps give families peace of mind by allowing them to enroll people with a disability or cognitive impairment like Alzheimer's disease into a database so that law enforcement can more quickly help return people when they go missing. In neighboring Los Angeles County, the L.A. Found program is also working to address the issue of wandering. The county's efforts were inspired by the family of Nancy Paulikas, a woman with Alzheimer's who wandered and whose remains were identified several years later. Her family's advocacy has resulted in an initiative that has increased community education and awareness, trained thousands of first responders, and connected over a thousand individuals with technology.

"Prevention is the key to addressing the risk of wandering and protecting the lives of some of our most vulnerable Californians. This bill will create a statewide work group led by the California Department of Justice with the goal of creating recommendations to support prevention of wandering as well as recommendations to strengthen first responder agencies' ability to quickly and effectively find those who have wandered..."

5) **Current Legislation**:

   a) AB 21 (Gipson) requires the Commission on Peace Officer Standards and Training (POST) to revise their training for field-training officers (FTOs) on interacting with persons with mental illness or intellectual disabilities to also include instruction on interacting with persons with Alzheimer's or dementia. AB 21 is currently pending hearing in the Assembly Appropriations Committee.

   b) AB 385 (Ta) requires that the State Department of Public Health educate and inform health care providers and other caregivers about providing care to an individual with Alzheimer's disease or dementia. AB 385 is currently pending hearing in the Assembly Committee on Health.

6) **Prior Legislation**:

a) AB 2175 (Blanca Rubio), of the 2021-2022 Legislative Session, would have created the California Wandering Prevention Task Force to address wandering by individuals with cognitive impairment and submit a report to the Legislature detailing their findings. AB 2175 was held in the Assembly Appropriations Committee.

b) AB 1684 (Voepel) of the 2021-2022 Legislative Session, would have required the State Department of Public Health to educate and inform health care providers and other caregivers about providing care to an individual with Alzheimer's disease or dementia. AB 1684 was held in the Senate Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Alzheimer's Greater Los Angeles (Co-Sponsor)
Alzheimer's Orange County (Co-Sponsor)
Alzheimer's San Diego (Co-Sponsor)
California Public Defenders Association (CPDA)
Los Angeles County

Opposition

None Received.

Analysis Prepared by: Mureed Rasool / PUB. S. / (916) 319-3744

Date of Hearing: March 14, 2023
Counsel: Cheryl Anderson

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 442 (Villapudua) – As Introduced February 6, 2023

As Proposed to be Amended in Committee

SUMMARY: Requires the Department of Justice (DOJ) to provide state summary criminal history information (RAP sheets) to public defenders or specified non-profit attorneys if requested in the course of consultation or representation and the client or prospective client gives informed written consent.

EXISTING LAW:

1) Requires DOJ to maintain state summary criminal history information. (Pen. Code, § 11105, subd. (a).)

2) Defines "state summary criminal history information" as "the master record of information compiled by the Attorney General pertaining to the identification and criminal history of a person, such as name, date of birth, physical description, fingerprints, photographs, dispositions, sentencing information, and similar data about the person." (Pen. Code, § 11105, subd. (a)(2)(A).)

3) Requires DOJ to furnish state summary criminal history information to the following entities, if needed in the course of their duties, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity in fulfilling employment, certification, or licensing duties, specified restrictions in the Labor Code are followed:

   a) The courts of California;

   b) Peace officers, as defined;

   c) District attorneys of California;

   d) Prosecuting city attorneys;

   e) City attorneys pursuing civil gang injunctions or drug abatement actions;

   f) Probation officers of California;

   g) Parole officers of California;

h) A public defender or attorney of record when representing a person in proceedings upon a petition for a certificate of rehabilitation and pardon;

i) A public defender or attorney of record when representing a person in a criminal case or a juvenile delinquency proceeding, including all appeals and postconviction motions, or a parole, mandatory supervision, or postrelease community supervision revocation or revocation extension proceeding, and if the information is requested in the course of representation;

j) Any agency, officer, or official of the state if the criminal history information is required to implement a statute or regulation;

k) Any city or county, city and county, district, or any officer or official thereof if access is needed in order to assist that agency, officer, or official in fulfilling employment, certification, or licensing duties, and if the access is specifically authorized by the city council, board of supervisors, or governing board of the city, county, or district if the criminal history information is required to implement a statute, ordinance, or regulation;

l) The subject of the state summary criminal history information;

m) Any person or entity when access is expressly authorized by statute if the criminal history information is required to implement a statute or regulation;

n) Health officers of a city, county, city and county, or district when in the performance of their official duties preventing the spread of communicable diseases;

o) Any managing or supervising correctional officer of a county jail or other county correctional facility;

p) Any humane society, or society for the prevention of cruelty to animals for the appointment of humane officers;

q) Local child support agencies provided certain information is deleted or purged;

r) County child welfare agency personnel who have delegated authority as county probation officers;

s) The court of a tribe, or court of a consortium of tribes, that has entered into an agreement with the state as specified;

t) Child welfare agency personnel of a tribe or consortium of tribes that has entered into an agreement with the state as specified;

u) An officer providing conservatorship investigations;

v) A court investigator providing investigation reviews in conservatorships;

w) A person authorized to conduct a guardianship investigation;

x) A humane officer for the purposes of performing their duties;

y) A public agency that is an entity formed by the regional transportation planning authority, as defined, for the purposes of oversight and enforcement of the agency's policies; and

z) A state entity, or its designee, that receives federal tax information, for employee background checks. (Pen. Code, § 11105, subd. (b).)

4) Allows DOJ to furnish state summary criminal history information to specified entities and, when specifically authorized, federal-level criminal history information upon a showing of a compelling need, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity in fulfilling employment, certification, or licensing duties, specified restrictions in the Labor Code are followed. (Pen. Code, § 11105, subd. (c).)

5) Notwithstanding any other law, DOJ or a state or local law enforcement agency may require the submission of fingerprints for the purpose of conducting state summary criminal history information checks that are authorized by law. (Pen. Code, § 11105, subd. (i).)

6) Provides that any person desiring a copy of the record relating to himself shall obtain an application form furnished by DOJ which shall require the person's fingerprints in addition to such other information as DOJ specified. Applications may be obtained from police departments, sheriff departments, or DOJ. The fingerprinting agency may fix a reasonable fee for affixing the applicant's fingerprints to the form, and shall retain such fee. (Pen. Code, § 11122.)

7) Defines which nonprofit entities are presumed to be eligible for legal services funding administered by the State Bar. (Bus. & Prof. Cdoe, § 6213, 6214, 6214.5, 6215.)

8) Provides tax-exempt status to nonprofit organizations with specified purposes, including charitable. (26 USCS § 501(c)(3).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "With California having one of the highest recidivism rates in the country, it is important that we enact legislation that will help formerly incarcerated individuals. AB 442 will help these individuals reintegrate into society by removing unnecessary delays and barriers in receiving their state summary criminal history information (commonly called a 'RAP' sheet). This will allow formerly incarcerated individuals to receive accurate information about any impacts of their conviction(s) on employment, housing, education, or immigration."

2) **State Summary Criminal History Information**: State summary criminal history information is the master record of information compiled by DOJ pertaining to the identification and criminal history of any person. This information includes name, date of birth, physical description, fingerprints, photographs, arrests, dispositions and similar data. (Pen. Code, § 11105, subd. (a).) State summary criminal history information is commonly

referred to as a "RAP" sheet.

Under current law, and as relevant here, DOJ must provide summary criminal history information to the following: a public defender or attorney of record when representing a person in proceedings upon a petition for a certificate of rehabilitation and pardon; a public defender or attorney of record when representing a person in a criminal case or a juvenile delinquency proceeding, if the information is requested in the course of representation; and the subject of the state summary criminal history information. (Pen. Code, § 11105, subd. (b)(8), (b)(9) & (b)(12).)

This bill would require DOJ to also provide the summary criminal history information to public defenders or specified non-profit attorneys, if requested in the course of consulting or representing a potential client or client, and the person gives their informed written consent.

3) **Argument in Support**: According to *Californians for Safety and Justice*, a co-sponsor of this bill, "State summary criminal history information (commonly called a 'RAP' Sheet) contains the information necessary to evaluate a person's conviction history for potential post-conviction remedies and any restrictions associated with their conviction(s). This information can be accessed nearly instantly, by courts, law enforcement, prosecutors, state agencies, local governments, and a number of other entities and people. However, for a person to understand their own conviction history, they must complete a multi-step process that requires an in-person application and paying fees costing between $25 and $200. The person then must wait weeks to receive their own information before they can go to an attorney for support with any postconviction remedies, they may be eligible for and to understand any civil restrictions imposed because of their conviction history.

"Recent changes to the law have created automated record cleaning relief. This powerful tool can address many of the issues people face because of an old conviction. The Department of Justice does not provide people with any notice of relief under these new laws. Therefore, people cannot know their rights without first knowing if they have received these remedies. Timely access to state summary criminal history information allows an attorney to inform the person of available remedies. Further, identifying automated relief prevents the filing of duplicative and unnecessary petitions, thus saving limited court resources.

"By allowing clean slate, legal aid, pro bono, and other attorneys supporting people with a conviction history, to swiftly obtain the state summary criminal history information without additional costs AB 442 reduces barriers to post-conviction relief and allows for a more efficient evaluation of a person's conviction history which is critical to provide accurate information about any impacts of their conviction(s) on employment, housing, education, or immigration."

4) **Argument in Opposition**: None submitted

5) **Prior Legislation**:

   a) SB 211 (Umberg), Chapter 723, Statutes of 2021, defined "civil legal services" for purposes of eligible work by qualified legal services organizations and support centers, to include legal services related to expungements, record sealing or clearance proceedings not requiring a finding of factual innocence, and infractions.

b) AB 2133 (Weber), Chapter 965, Statutes of 2018, clarified in what situations a criminal defense attorney may be provided with information from the DOJ's summary criminal history database and eliminated the requirement that a criminal defense attorney have some separate legal authorization to obtain that information.

c) AB 971 (Garcia), Chapter 458, Statutes of 2013, authorized certain criminal history information to be provided to paratransit agencies for the purposes of oversight and enforcement of the agency's policies with respect to contracted providers of service.

d) AB 428 (Fletcher), Chapter 441, Statutes of 2009, added any foreign government to the list of entities to which DOJ is authorized to provide summary criminal history information, if the information is requested by the individual who is the subject of the record requested and if that information is needed in conjunction with the individual's application to adopt a minor child who is a citizen of that foreign nation.

e) SB 2161 (Schiff), Chapter 421, Statutes of 2000, required DOJ and local criminal justice agencies to furnish the state summary criminal history information to county child welfare agency personnel who have been delegated the authority of county probation officers pursuant to these provisions.

REGISTERED SUPPORT / OPPOSITION:

Support

A New Way of Life Reentry Project (Co-Sponsor)
California for Safety and Justice (Co-Sponsor)
East Bay Community Law Center (Co-Sponsor)
Legal Aid at Work (Co-Sponsor)
Legal Services for Prisoners with Children (Co-Sponsor)
Root and Rebound Reentry Advocates (Co-Sponsor)
California Attorneys for Criminal Justice
Community Legal Services in East Palo Alto
National Association of Social Workers, California Chapter
Open Door Legal
Peace Officers Research Association of California (PORAC)

Opposition

None.

Analysis Prepared by: Cheryl Anderson / PUB. S. / (916) 319-3744

Amended Mock-up for 2023-2024 AB-442 (Villapudua (A))

Mock-up based on Version Number 99 - Introduced 2/6/23
Submitted by: Cheryl Anderson, Assembly Public Safety Committee

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 17202 of the Family Code is amended to read:

17202. (a) The department is hereby designated the single organizational unit whose duty it shall be to administer the Title IV-D state plan for securing child and spousal support, medical support, and determining paternity. State plan functions shall be performed by other agencies as required by law, by delegation of the department, or by cooperative agreements.

(b) The department shall appoint the local child support agency, as defined in Section 17304, or any other entity receiving federal tax information in performance of its child support duties as its designee for purposes of paragraph (27) of subdivision (b) of Section 11105 of the Penal Code.

(c) For purposes of this section, "federal tax information" is as defined in Section 1044 of the Government Code.

SEC. 2. Section 11105 of the Penal Code is amended to read:

11105. (a) (1) The Department of Justice shall maintain state summary criminal history information.

(2) As used in this section:

(A) "State summary criminal history information" means the master record of information compiled by the Attorney General pertaining to the identification and criminal history of a person, such as name, date of birth, physical description, fingerprints, photographs, dates of arrests, arresting agencies and booking numbers, charges, dispositions, sentencing information, and similar data about the person.

(B) "State summary criminal history information" does not refer to records and data compiled by criminal justice agencies other than the Attorney General, nor does it refer to records of complaints to or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice.

(b) The Attorney General shall furnish state summary criminal history information to the following, if needed in the course of their duties, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other

entity, in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and Section 432.7 of the Labor Code shall apply:

(1) The courts of the state.

(2) Peace officers of the state, as defined in Section 830.1, subdivisions (a) and (e) of Section 830.2, subdivision (a) of Section 830.3, subdivision (a) of Section 830.31, and subdivisions (a) and (b) of Section 830.5.

(3) District attorneys of the state.

(4) Prosecuting city attorneys or city prosecutors of a city within the state.

(5) City attorneys pursuing civil gang injunctions pursuant to Section 186.22a, or drug abatement actions pursuant to Section 3479 or 3480 of the Civil Code, or Section 11571 of the Health and Safety Code.

(6) Probation officers of the state.

(7) Parole officers of the state.

(8) A public defender or attorney of record when representing a person in proceedings upon a petition for a certificate of rehabilitation and pardon pursuant to Section 4852.08.

(9) A public defender or attorney of record when representing a person in a criminal case or a juvenile delinquency proceeding, including all appeals and postconviction motions, or a parole, mandatory supervision pursuant to paragraph (5) of subdivision (h) of Section 1170, or postrelease community supervision revocation or revocation extension proceeding, if the information is requested in the course of representation.

(10) A public defender**, attorney whose practice is qualified to receive funding under Section 6213 of the Business and Professions Code,** or attorney **providing legal services at an organization that is organized as a 501(c)(3), if the information is requested** in the course of a consultation or representation, on behalf of a prospective client or client, who is the subject of state summary criminal history information**, and the subject of the information gives informed written consent to the information being furnished**.

(11) An agency, officer, or official of the state if the state summary criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct. The agency, officer, or official of the state authorized by this paragraph to receive state summary criminal history information may perform state and federal criminal history information checks as provided for in subdivision (u). The Department of Justice shall provide a state or federal response to the agency, officer, or official pursuant to subdivision (p).

(12) A city, county, city and county, or district, or an officer or official thereof, if access is needed in order to assist that agency, officer, or official in fulfilling employment, certification, or licensing duties, and if the access is specifically authorized by the city council, board of supervisors, or governing board of the city, county, or district if the state summary criminal history information is required to implement a statute, ordinance, or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct. The city, county, city and county, district, or the officer or official thereof authorized by this paragraph may also transmit fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation.

(13) The subject of the state summary criminal history information under procedures established under Article 5 (commencing with Section 11120).

(14) A person or entity when access is expressly authorized by statute if the criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct.

(15) Health officers of a city, county, city and county, or district when in the performance of their official duties enforcing Section 120175 of the Health and Safety Code.

(16) A managing or supervising correctional officer of a county jail or other county correctional facility.

(17) A humane society, or society for the prevention of cruelty to animals, for the specific purpose of complying with Section 14502 of the Corporations Code for the appointment of humane officers.

(18) Local child support agencies established by Section 17304 of the Family Code. When a local child support agency closes a support enforcement case containing state summary criminal history information, the agency shall delete or purge from the file and destroy documents or information concerning or arising from offenses for or of which the parent has been arrested, charged, or convicted, other than for offenses related to the parent's having failed to provide support for minor children, consistent with the requirements of Section 17531 of the Family Code.

(19) County child welfare agency personnel who have been delegated the authority of county probation officers to access state summary criminal history information pursuant to Section 272 of the Welfare and Institutions Code for the purposes specified in Section 16504.5 of the Welfare and Institutions Code. Information from criminal history records provided pursuant to this subdivision shall not be used for a purpose other than those specified in this section and Section 16504.5 of the Welfare and Institutions Code. When an agency obtains records both on the basis

of name checks and fingerprint checks, final placement decisions shall be based only on the records obtained pursuant to the fingerprint check.

(20) The court of a tribe, or court of a consortium of tribes, that has entered into an agreement with the state pursuant to Section 10553.1 of the Welfare and Institutions Code. This information may be used only for the purposes specified in Section 16504.5 of the Welfare and Institutions Code and for tribal approval or tribal licensing of foster care or adoptive homes. Article 6 (commencing with Section 11140) shall apply to officers, members, and employees of a tribal court receiving state summary criminal history information pursuant to this section.

(21) Child welfare agency personnel of a tribe or consortium of tribes that has entered into an agreement with the state pursuant to Section 10553.1 of the Welfare and Institutions Code and to whom the state has delegated duties under paragraph (2) of subdivision (a) of Section 272 of the Welfare and Institutions Code. The purposes for use of the information shall be for the purposes specified in Section 16504.5 of the Welfare and Institutions Code and for tribal approval or tribal licensing of foster care or adoptive homes. When an agency obtains records on the basis of name checks and fingerprint checks, final placement decisions shall be based only on the records obtained pursuant to the fingerprint check. Article 6 (commencing with Section 11140) shall apply to child welfare agency personnel receiving criminal record offender information pursuant to this section.

(22) An officer providing conservatorship investigations pursuant to Sections 5351, 5354, and 5356 of the Welfare and Institutions Code.

(23) A court investigator providing investigations or reviews in conservatorships pursuant to Section 1826, 1850, 1851, or 2250.6 of the Probate Code.

(24) A person authorized to conduct a guardianship investigation pursuant to Section 1513 of the Probate Code.

(25) A humane officer pursuant to Section 14502 of the Corporations Code for the purposes of performing the officer's duties.

(26) A public agency described in subdivision (b) of Section 15975 of the Government Code, for the purpose of oversight and enforcement policies with respect to its contracted providers.

(27) (A) A state entity, or its designee, that receives federal tax information. A state entity or its designee that is authorized by this paragraph to receive state summary criminal history information also may transmit fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation for the purpose of the state entity or its designee obtaining federal-level criminal offender record information from the Department of Justice. This information shall be used only for the purposes set forth in Section 1044 of the Government Code.

(B) For purposes of this paragraph, "federal tax information," "state entity" and "designee" are as defined in paragraphs (1), (2), and (3), respectively, of subdivision (f) of Section 1044 of the Government Code.

(c) The Attorney General may furnish state summary criminal history information and, when specifically authorized by this subdivision, federal-level criminal history information upon a showing of a compelling need to any of the following, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and Section 432.7 of the Labor Code shall apply:

(1) A public utility, as defined in Section 216 of the Public Utilities Code, that operates a nuclear energy facility when access is needed in order to assist in employing persons to work at the facility, provided that, if the Attorney General supplies the data, the Attorney General shall furnish a copy of the data to the person to whom the data relates.

(2) A peace officer of the state other than those included in subdivision (b).

(3) An illegal dumping enforcement officer as defined in subdivision (i) of Section 830.7.

(4) A peace officer of another country.

(5) Public officers, other than peace officers, of the United States, other states, or possessions or territories of the United States, provided that access to records similar to state summary criminal history information is expressly authorized by a statute of the United States, other states, or possessions or territories of the United States if the information is needed for the performance of their official duties.

(6) A person when disclosure is requested by a probation, parole, or peace officer with the consent of the subject of the state summary criminal history information and for purposes of furthering the rehabilitation of the subject.

(7) The courts of the United States, other states, or territories or possessions of the United States.

(8) Peace officers of the United States, other states, or territories or possessions of the United States.

(9) An individual who is the subject of the record requested if needed in conjunction with an application to enter the United States or a foreign nation.

(10) (A) (i) A public utility, as defined in Section 216 of the Public Utilities Code, or a cable corporation as defined in subparagraph (B), if receipt of criminal history information is needed in order to assist in employing current or prospective employees, contract employees, or subcontract employees who, in the course of their employment, may be seeking entrance to private residences

or adjacent grounds. The information provided shall be limited to the record of convictions and arrests for which the person is released on bail or on their own recognizance pending trial.

(ii) If the Attorney General supplies the data pursuant to this paragraph, the Attorney General shall furnish a copy of the data to the current or prospective employee to whom the data relates.

(iii) State summary criminal history information is confidential and the receiving public utility or cable corporation shall not disclose its contents, other than for the purpose for which it was acquired. The state summary criminal history information in the possession of the public utility or cable corporation and all copies made from it shall be destroyed not more than 30 days after employment or promotion or transfer is denied or granted, except for those cases where a current or prospective employee is out on bail or on their own recognizance pending trial, in which case the state summary criminal history information and all copies shall be destroyed not more than 30 days after the case is resolved.

(iv) A violation of this paragraph is a misdemeanor, and shall give the current or prospective employee who is injured by the violation a cause of action against the public utility or cable corporation to recover damages proximately caused by the violations. A public utility's or cable corporation's request for state summary criminal history information for purposes of employing current or prospective employees who may be seeking entrance to private residences or adjacent grounds in the course of their employment shall be deemed a "compelling need" as required to be shown in this subdivision.

(v) This section shall not be construed as imposing a duty upon public utilities or cable corporations to request state summary criminal history information on current or prospective employees.

(B) For purposes of this paragraph, "cable corporation" means a corporation or firm that transmits or provides television, computer, or telephone services by cable, digital, fiber optic, satellite, or comparable technology to subscribers for a fee.

(C) Requests for federal-level criminal history information received by the Department of Justice from entities authorized pursuant to subparagraph (A) shall be forwarded to the Federal Bureau of Investigation by the Department of Justice. Federal-level criminal history information received or compiled by the Department of Justice may then be disseminated to the entities referenced in subparagraph (A), as authorized by law.

(11) A campus of the California State University or the University of California, or a four-year college or university accredited by a regional accreditation organization approved by the United States Department of Education, if needed in conjunction with an application for admission by a convicted felon to a special education program for convicted felons, including, but not limited to, university alternatives and halfway houses. Only conviction information shall be furnished. The college or university may require the convicted felon to be fingerprinted, and any inquiry to the department under this section shall include the convicted felon's fingerprints and any other information specified by the department.

(12) A foreign government, if requested by the individual who is the subject of the record requested, if needed in conjunction with the individual's application to adopt a minor child who is a citizen of that foreign nation. Requests for information pursuant to this paragraph shall be in accordance with the process described in Sections 11122 to 11124, inclusive. The response shall be provided to the foreign government or its designee and to the individual who requested the information.

(d) Whenever an authorized request for state summary criminal history information pertains to a person whose fingerprints are on file with the Department of Justice and the department has no criminal history of that person, and the information is to be used for employment, licensing, or certification purposes, the fingerprint card accompanying the request for information, if any, may be stamped "no criminal record" and returned to the person or entity making the request.

(e) Whenever state summary criminal history information is furnished as the result of an application and is to be used for employment, licensing, or certification purposes, the Department of Justice may charge the person or entity making the request a fee that it determines to be sufficient to reimburse the department for the cost of furnishing the information. In addition, the Department of Justice may add a surcharge to the fee to fund maintenance and improvements to the systems from which the information is obtained. Notwithstanding any other law, a person or entity required to pay a fee to the department for information received under this section may charge the applicant a fee sufficient to reimburse the person or entity for this expense. All moneys received by the department pursuant to this section, Sections 11105.3 and 26190, and former Section 13588 of the Education Code shall be deposited in a special account in the General Fund to be available for expenditure by the department to offset costs incurred pursuant to those sections and for maintenance and improvements to the systems from which the information is obtained upon appropriation by the Legislature.

(f) Whenever there is a conflict, the processing of criminal fingerprints and fingerprints of applicants for security guard or alarm agent registrations or firearms qualification permits submitted pursuant to Section 7583.9, 7583.23, 7596.3, or 7598.4 of the Business and Professions Code shall take priority over the processing of other applicant fingerprints.

(g) It is not a violation of this section to disseminate statistical or research information obtained from a record, provided that the identity of the subject of the record is not disclosed.

(h) It is not a violation of this section to include information obtained from a record in (1) a transcript or record of a judicial or administrative proceeding or (2) any other public record if the inclusion of the information in the public record is authorized by a court, statute, or decisional law.

(i) Notwithstanding any other law, the Department of Justice or a state or local law enforcement agency may require the submission of fingerprints for the purpose of conducting state summary criminal history information checks that are authorized by law.

(j) The state summary criminal history information shall include any finding of mental incompetence pursuant to Chapter 6 (commencing with Section 1367) of Title 10 of Part 2 arising out of a complaint charging a felony offense specified in Section 290.

(k) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization and the information is to be used for peace officer employment or certification purposes. As used in this subdivision, a peace officer is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

(2) Notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on their own recognizance pending trial.

(C) Every arrest or detention, except for an arrest or detention resulting in an exoneration, provided, however, that where the records of the Department of Justice do not contain a disposition for the arrest, the Department of Justice first makes a genuine effort to determine the disposition of the arrest.

(D) Every successful diversion.

(E) Every date and agency name associated with all retained peace officer or nonsworn law enforcement agency employee preemployment criminal offender record information search requests.

(F) Sex offender registration status of the applicant.

(G) Sentencing information, if present in the department's records at the time of the response.

(l) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by a criminal justice agency or organization as defined in Section 13101, and the information is to be used for criminal justice employment, licensing, or certification purposes.

(2) Notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on their own recognizance pending trial.

(C) Every arrest for an offense for which the records of the Department of Justice do not contain a disposition or that did not result in a conviction, provided that the Department of Justice first makes a genuine effort to determine the disposition of the arrest. However, information concerning an arrest shall not be disclosed if the records of the Department of Justice indicate or if the genuine effort reveals that the subject was exonerated, successfully completed a diversion or deferred entry of judgment program, or the arrest was deemed a detention, or the subject was granted relief pursuant to Section 851.91.

(D) Every date and agency name associated with all retained peace officer or nonsworn law enforcement agency employee preemployment criminal offender record information search requests.

(E) Sex offender registration status of the applicant.

(F) Sentencing information, if present in the department's records at the time of the response.

(m) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization pursuant to Section 1522, 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or a statute that incorporates the criteria of any of those sections or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction of an offense rendered against the applicant, except a conviction for which relief has been granted pursuant to Section 1203.49.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on their own recognizance pending trial.

(C) Every arrest for an offense for which the Department of Social Services is required by paragraph (1) of subdivision (a) of Section 1522 of the Health and Safety Code to determine if an applicant has been arrested. However, if the records of the Department of Justice do not contain a disposition for an arrest, the Department of Justice shall first make a genuine effort to determine the disposition of the arrest.

(D) Sex offender registration status of the applicant.

(E) Sentencing information, if present in the department's records at the time of the response.

(3) Notwithstanding the requirements of the sections referenced in paragraph (1) of this subdivision, the Department of Justice shall not disseminate information about an arrest subsequently deemed a detention or an arrest that resulted in the successful completion of a diversion program, exoneration, or a grant of relief pursuant to Section 851.91.

(n) (1) This subdivision shall apply whenever state or federal summary criminal history information, to be used for employment, licensing, or certification purposes, is furnished by the Department of Justice as the result of an application by an authorized agency, organization, or individual pursuant to any of the following:

(A) Paragraph (10) of subdivision (c), when the information is to be used by a cable corporation.

(B) Section 11105.3 or 11105.4.

(C) Section 15660 of the Welfare and Institutions Code.

(D) A statute that incorporates the criteria of any of the statutory provisions listed in subparagraph (A), (B), or (C), or of this subdivision, by reference.

(2) With the exception of applications submitted by transportation companies authorized pursuant to Section 11105.3, and notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction, except a conviction for which relief has been granted pursuant to Section 1203.49, rendered against the applicant for a violation or attempted violation of an offense specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code. However, with the exception of those offenses for which registration is required pursuant to Section 290, the Department of Justice shall not disseminate information pursuant to this subdivision unless the conviction occurred within 10 years of the date of the agency's request for information or the conviction is over 10 years old but the subject of the request was incarcerated within 10 years of the agency's request for information.

(B) Every arrest for a violation or attempted violation of an offense specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on their own recognizance pending trial.

(C) Sex offender registration status of the applicant.

(D) Sentencing information, if present in the department's records at the time of the response.

(o) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an

authorized agency or organization pursuant to Section 379 or 1300 of the Financial Code, or a statute that incorporates the criteria of either of those sections or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant for a violation or attempted violation of an offense specified in Section 1300 of the Financial Code, except a conviction for which relief has been granted pursuant to Section 1203.49.

(B) Every arrest for a violation or attempted violation of an offense specified in Section 1300 of the Financial Code for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on their own recognizance pending trial.

(C) Sentencing information, if present in the department's records at the time of the response.

(p) (1) This subdivision shall apply whenever state or federal criminal history information is furnished by the Department of Justice as the result of an application by an agency, organization, or individual not defined in subdivision (k), (l), (m), (n), or (o), or by a transportation company authorized pursuant to Section 11105.3, or a statute that incorporates the criteria of that section or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant, except a conviction for which relief has been granted pursuant to Section 1203.4, 1203.4a, 1203.41, 1203.42, 1203.425, or 1203.49. The Commission on Teacher Credentialing, school districts, county offices of education, charter schools, private schools, state special schools for the blind and deaf, or any other entity required to have a background check because of a contract with a school district, county office of education, charter school, private school, or state special school for the blind and deaf, shall receive every conviction rendered against an applicant, retroactive to January 1, 2020, regardless of relief granted pursuant to Section 1203.4, 1203.4a, 1203.41, 1203.42, 1203.425, or 1203.49.

(B) Notwithstanding subparagraph (A) or any other law, information for a conviction for a controlled substance offense listed in Section 11350 or 11377, or former Section 11500 or 11500.5, of the Health and Safety Code that is more than five years old, for which relief is granted pursuant to Section 1203.4, 1203.4a, 1203.41, 1203.42, 1203.425, or 1203.49, shall not be disseminated.

(C) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on their own recognizance pending trial.

(D) Sex offender registration status of the applicant.

(E) Sentencing information, if present in the department's records at the time of the response.

(q) All agencies, organizations, or individuals defined in subdivisions (k), (l), (m), (n), (o), and (p) may contract with the Department of Justice for subsequent notification pursuant to Section 11105.2. This subdivision shall not supersede sections that mandate an agency, organization, or individual to contract with the Department of Justice for subsequent notification pursuant to Section 11105.2.

(r) This section does not require the Department of Justice to cease compliance with any other statutory notification requirements.

(s) The provisions of Section 50.12 of Title 28 of the Code of Federal Regulations are to be followed in processing federal criminal history information.

(t) Whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency, organization, or individual defined in subdivisions (k) to (p), inclusive, and the information is to be used for employment, licensing, or certification purposes, the authorized agency, organization, or individual shall expeditiously furnish a copy of the information to the person to whom the information relates if the information is a basis for an adverse employment, licensing, or certification decision. When furnished other than in person, the copy shall be delivered to the last contact information provided by the applicant.

(u) (1) If a fingerprint-based criminal history information check is required pursuant to any statute, that check shall be requested from the Department of Justice and shall be applicable to the person identified in the referencing statute. The agency or entity identified in the statute shall submit to the Department of Justice fingerprint images and related information required by the Department of Justice of the types of applicants identified in the referencing statute, for the purpose of obtaining information as to the existence and content of a record of state or federal convictions and state or federal arrests and also information as to the existence and content of a record of the state or federal arrests for which the Department of Justice establishes that the person is free on bail or on their own recognizance pending trial or appeal.

(2) If requested, the Department of Justice shall transmit fingerprint images and related information received pursuant to this section to the Federal Bureau of Investigation for the purpose of obtaining a federal criminal history information check. The Department of Justice shall review the information returned from the Federal Bureau of Investigation, and compile and disseminate a response or a fitness determination, as appropriate, to the agency or entity identified in the referencing statute.

(3) The Department of Justice shall provide a state- or federal-level response or a fitness determination, as appropriate, to the agency or entity identified in the referencing statute, pursuant to the identified subdivision.

(4) The agency or entity identified in the referencing statute shall request from the Department of Justice subsequent notification service, as provided pursuant to Section 11105.2, for persons described in the referencing statute.

(5) The Department of Justice shall charge a fee sufficient to cover the reasonable cost of processing the request described in this subdivision.

(v) This section shall become operative on January 1, 2023.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.